

IN THE DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF TENNESSEE

SOUTHERN DIVISION

JR HOFFA

UNITED STATES OF AMERICA,

Plaintiff.

vs.

JAMES R. HOFFA, ET AL,

Defendants.

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NO. 11,898

Date: January 28, 1964

Chattanooga, Tennessee

Before: Honorable Frank W.
Wilson, Judge

OFFICIAL TRANSCRIPT OF PROCEEDINGS

VOLUME VIII

PAGES 1571 TO 1832

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I N D E X

TRIAL EXHIBITS

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4, Deft. Parks	Statement (Affidavit) Witness Fields	1764

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1 SEVENTH DAY OF TRIAL

2 9:05 O'Clock A.M.
3 January 28, 1964

4 (Thereupon, pursuant to adjournment from January
5 27, 1964, court was in session.)

6 THE COURT: Upon yesterday a motion was filed
7 upon behalf of the defendants requesting the Court to remove
8 Mr. Disspayne from serving in any way in waiting upon the
9 jury and averring that during the former trial of this case
10 that a disagreement had occurred between one of the defendants
11 in this case and Mr. Disspayne in regard to taking some
12 photographs in the courtroom.

13 The Court, in the interest of avoiding any
14 semblance of partiality upon the part of any officer attending
15 the jury, sustained that motion, sustained it to the extent
16 of removing Mr. Disspayne from any further attendance upon
17 the jury and the motion was in all other respects overruled,
18 including the motion for a mistrial.

19 All right. Gentlemen, are we ready? Yes, sir,
20 Mr. Haggerty.

21 MR. HAGGERTY: I have a brief, may it please the
22 Court, that I desire to file with the Court and I will serve
23 the government with a copy.

24 THE COURT: All right, sir. All right. Now,
25 then, gentlemen, in reading the transcript of yesterday's

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THE COURT: Upon yesterday a motion was filed upon behalf of the defendants requesting the Court to remove Mr. Disspayne from serving in any way in waiting upon the jury and averring that during the former trial of this case that a disagreement had occurred between one of the defendants in this case and Mr. Disspayne in regard to taking some photographs in the courtroom.

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All right. Gentlemen, are we ready? Yes, sir, Mr. Haggerty.

MR. HAGGERTY: I have a brief, may it please the Court, that I desire to file with the Court and I will serve the government with a copy.

THE COURT: All right, sir. All right. Now, then, gentlemen, in reading the transcript of yesterday's

1 proceedings, the transcript of instructions given to the
2 jury by the Court upon admissibility and the extent that the
3 jury might consider any testimony by the Witness Walker as
4 to out-of-court statements by the defendant, Mr. Parks,
5 appears to have been to the Court improperly transcribed.
6 At any rate, the Court was reading those instructions and
7 the instructions as they appear in the record did not cor-
8 respond with what the Court read.

9 The Court will, therefore, again repeat those
10 instructions this morning.

11 MR. REDDY: What page does your Honor have?

12 THE COURT: Yes, sir.

13 MR. NEAL: Your Honor, may I point out one thing?
14 I think that the Court properly instructed on the rules re-
15 garding conspiracy but the government's concept of this
16 indictment, your Honor, is primarily that of the carrying
17 out of the act by one defendant and the inducing or pro-
18 curing by another defendant, the aider and abettor.

19 Now, whether that be a conspiracy or not, the
20 rules regarding conspiracy are somewhat complex and I think
21 the Court should point out to the jury in the instructions
22 that if any defendant sends another man out to make an
23 improper offer or do anything else than anything that person
24 sent out does is attributable to the principal. Now, that
25 is really the essence of the counts in this indictment and

1 I am not sure--that is a very simple matter, it is easily
2 understood and I am not sure that the jury is not getting
3 too confused and too involved in the conspiracy, while that
4 is involved, of course, but the essence here is the principal
5 agent.

6 If the Defendant Hoffa is charged with aiding
7 and abetting Medlin, for example, or if the Defendant Hoffa
8 is charged with aiding and abetting the Defendant Parks, if
9 Parks went out and made an improper offer or approach to a
10 juror and if the Defendant Hoffa induced him to go out there,
11 then the Defendant Hoffa is responsible for everything that
12 Parks does out there or gets somebody else to do along that
13 line and that is really the essence of the aiding and
14 abetting idea.

15 I am not sure, your Honor, that this more simple
16 theory was explained to the jury. I request that that be
17 done.

End Tk 1 18
Tk 2 fls. 19

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1 THE COURT: Mr. Schiffer, yes, let me just look
2 at my notes a moment, Mr. Schiffer. All right, Mr. Schiffer.

3 MR. SCHIFFER: If the Court please, I wonder at
4 this time if it wouldn't be improper to explore the entire
5 theory on this conspiracy insofar as the Court gave it to the
6 jury on yesterday and which is going to be corrected and in
7 the light of what Mr. Neal has just suggested, I believe that
8 if we lay a proper foundation at this time insofar as the law
9 is concerned that we certainly will have made every effort to
10 remove the future error in this case insofar as the conspiracy
11 is concerned. There is no conspiracy, of course, in this very
12 trial here. There has been a severance of the conspiracy
13 found in substantive counts and it is interesting to note that
14 in the conspiracy count itself which has been severed, the
15 indictment reads that from on or about the first day of
16 October, 1962, up to and including the date of filing of this
17 indictment, et cetera, that Count 3 states that during the
18 period from on or about October 20, 1962, up to and including
19 December 20, 1962, and December 22, your Honor, as the record
20 here indicates, that that was the day that Gratin Fields was
21 excused from the jury.

22 Under the law and there is the slightest case to
23 the contrary, what occurred after December 22nd cannot be
24 introduced in evidence against Parks on the basis that it was
25 made while the conspiracy was pending or the agency was exist-

1 ing or in furtherance of the objects of the conspiracy. And
2 for support we point out Grunewald against the United States,
3 353 U. S. 391, and Ludwak against the United States, 344
4 U. S. 604.

5 It is quite evident in a certain reason of the law
6 I believe that it will not be contradicted that the arrest of
7 the co-conspirator the conspiracy itself is ended and when a
8 juror is removed who is the object so far as Count 3 reflects
9 of some allegedly unlawful endeavor there cannot be after
10 that thing an attempt to corrupt that particular person in
11 the discharge of his duties because he has no more duty to
12 perform as a juror.

13 THE COURT: Mr. Schiffer, what do you say was the
14 date that Mr. Fields was removed as a juror in the case?

15 MR. SCHIFFER: The 20th of December, 1962.

16 THE COURT: All right.

17 MR. SCHIFFER: Now, it is true that statements
18 made after a conspiracy is terminated may be used against the
19 one making them as admissions against interests, but the rule
20 that extrajudicial admissions is not admissible until the
21 corpus delicti has been proved is applicable only if the
22 admission is made subsequent to the commission of the crime.

23 Therefore, if the government is seeking to intro-
24 duce admissions by Parks after the alleged crime was committed
25 but there is yet no proof of the alleged crime. U. S. against

1 Potson (spelling) P-o-t-s-o-n, 171 Fed. 2nd 495 and 499.

2 I should like to read a short excerpt from that
3 case with your kind permission, sir.

4 At page 499, second paragraph on the page.

5 "The defendant attacks the admission of Exhibit No. 28, the
6 financial statement of defendant made to a bank in 1930. He
7 contends that the government used this exhibit for the purpose
8 of establishing the corpus delicti of the crime charged and
9 that being a mere admission by defendant, its reception in
10 evidence violated the rule that an extrajudicial admission is
11 not admissible until the corpus delicti has been proved and
12 that the corpus delicti cannot be proved solely through the
13 use of an uncorroborated admission. The history of this rule
14 is closely allied with another that a man may not be convicted
15 upon his own corroborated extrajudicial confession which had
16 its original desire of the courts to guard against the
17 tragic consequences of false confession of guilt."

End TK 2
TK 3 fls

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1 To the point, Your Honor, with reference to these
2 extra admissions, they could never be admitted in evidence
3 until the crime itself has been shown and not merely shown
4 but reflected as the true substance of the count which is
5 alleged in Count 3. The government here is trying, what the
6 government here is trying to do is try this case so as though
7 the conspiracy count were before this court and jury and it
8 is now understandable why the government desperately sought
9 before Your Honor to reinstate the conspiracy count after it
10 had been severed, but even if there were a conspiracy count
11 before the court the conspiracies are deemed terminated
12 when their objective is accomplished and this accomplishment
13 of the objective and the end of the conspiracy can be pin-
14 pointed in our time as to time and place without any question.

15 The cutoff date, Your Honor, in this case in
16 count three in any event must be December 20th, 1962, and we
17 are relying as an authority on the Krulewitch against the
18 United States 336 U. S. 440, 442, and 443, Ludwak against
19 the United States, which I have already averred to, and
20 people against McWade, 110 New York 284, 308 United States
21 against Ervine.

22 THE COURT: 248 at 308.

23 MR. SCHIFFER: 284 at 308, yes, sir. United
24 States against Ervine, 98 U. S. 540 and Fiswick versus the
25 United States, 329 U. S. 211 at 216, "and before the

1 statements of an alleged co-conspirator may be received in
2 evidence as an exception to the hearsay rule it is necessary
3 that there be competent proof aliunde from which the jury
4 could conclude that the speaker himself was a member of the
5 conspiracy." Dennis against the United States 302 Fed. 2d
6 5 and 10.

7 Your Honor, at this point I believe this jury
8 would be brought into hopeless confusion and certainly I
9 speak for some of the defense counsel, including myself, that
10 we could not adequately meet any issue presented by this
11 indictment, specifically with count three, unless the
12 government first obeys the mandate of the upper courts, who
13 set these rules, and the government now proceeds at this
14 point to first set up the conspiracy and show it substantively
15 and for that purpose, Your Honor, I respectfully urge and
16 I so move that the testimony of Mr. Walker, the present
17 witness, be excluded until the government at this point
18 proves a conspiracy.

19 Now, what is the government trying to do? They
20 are trying to hitch the horse to the wagon. They cannot
21 have it both ways, Your Honor. We respectfully submit what
22 the government is trying to do is simply this:

23 They evidently cannot prove the conspiracy, and
24 I am speaking of count three at this point, they find
25 themselves in a position with a hope at best to bring in

1 statements, such as Mr. Walker's or people of that general
2 area of testimony, and hearsay testimony, and hope that
3 eventually it may show a conspiracy if taken in sum-total.
4 This would be violate completely of the rules set down by
5 the United States Supreme Court and in so many of the
6 Courts of Appeals and we can only appeal to Your Honor's
7 discretion in setting the rules of this case that the
8 government be forced to conform with the rules in proving
9 its case as those courts have determined.

10 We believe that the authority which we have
11 already mentioned to Your Honor unequivocally states that
12 the onus and the burden is on the government to first show
13 this conspiracy because otherwise, and as in so many of the
14 cases they point out, and there is a great deal of dictum
15 going back to cases, going way back before our time, in
16 which the courts have been very cherished and very careful
17 to annunciate the proposition that to prevent an injustice
18 is the reason for this rule and we respectfully urge Your
19 Honor that the government be advised and so ordered by the
20 court to first show the conspiracy before they bring in all
21 this hearsay, which in and of itself and taken in toto means
22 nothing where the substantive count is concerned and could
23 not be evidence to prove a conspiracy or a concerted action
24 on the part of any of the defendants mentioned in count
25 three.

1 Thank you, Your Honor.

2 THE COURT: All right. May we have the jury
3 return.

4 MR. BRANSTETTER: May it please the Court, did
5 the Court rule on the objection or does the Court now propose
6 to rule on the objection dealing with the testimony of the
7 witness that was on the stand when we adjourned?

8 THE COURT: Yes. Mr. Schiffer's motion to strike
9 that testimony, I believe that motion should be overruled
10 at this time.

11 MR. BRANSTETTER: May I--

12 THE COURT: (Interposing) Excuse me just a
13 moment. Yes, sir.

14 MR. BRANSTETTER: May it please the Court, I had
15 in mind the question dealing with the attempt this witness
16 to testify dealing with matters or statements that occurred
17 long after December 20th, the day that they referred to,
18 and I had understood that the case law was pretty clear that
19 statements following the concluding of a conspiracy or the
20 bringing in of the indictment, unless statements against
21 interests are made or admissible under some other exception,
22 certainly were inadmissible in evidence at all.

23 THE COURT: Yes. The Court would propose to
24 instruct the jury that any alleged statements of the
25 defendant Mr. Parks after the date of the conspiracy or after

1 the indictment could be admissible in any event only as to
2 the Defendant Mr. Parks.

3 MR. HOOKER: That's all they are offered for,
4 if Your Honor please.

5 THE COURT: And as it may or may not reflect
6 any guilt upon his part, but it would not be considered as
7 to any other defendant in any respect. All right. May we
8 have the jury.

9 (Thereupon, the jury of 12 and four alternates
10 were brought into open court and the following proceedings
11 were had to-wit:)

12 THE COURT: Ladies and gentlemen, it is the
13 desire of the Court and of counsel for both sides in this
14 case that the jury understand as clearly as we can make it
15 understandable to you, the various rules and the various
16 procedures that we follow in this case in order that you can
17 perform your duty intelligently and knowingly.

18 There will be, as there has been in the past from
19 time to time, objections made to testimony and it will be
20 necessary and appropriate for the court to rule upon those
21 objections.

22 In order for the Court to properly rule upon those
23 objections it may on occasion be necessary for the court to
24 know what the substance of the testimony is or may be before
25 I can perform or before I can make an intelligent judgment.

End
Tk 3

Tk 4
foll.

1 And for that reason it may be necessary as we
2 did yesterday to ask the jury to step out for a few moments
3 in order that the Court can review these matters and perform
4 its function properly and intelligently.

5 None of us in this case have any desire to make
6 any mistake or make any error in the trial of the case that
7 might in any way require that this case be tried over and
8 so, therefore, we are proceeding as cautiously as the circum-
9 stances require.

10 And to do this it does necessitate the incon-
11 venience to you of asking that you step out from time to
12 time, but I ask that you consider the problems that we all
13 have in this respect and realize that we are not doing this
14 in any respect to needlessly use your time or to harass you
15 in doing your duty.

16 We are extremely conscious of conserving your
17 time all that we possibly can and at the same time perform
18 our own duties properly.

19 Now, as I have indicated the Court desires that
20 you should understand all of the procedures and all of the
21 reasons as to why we do things as we do. Why do we exclude
22 the testimony from time to time? Why do we admit testimony
23 from time to time? Why does the Court instruct you that you
24 consider testimony as to one party or less than all parties?
25 And why does it instruct you otherwise on occasions?

1 Well, we have found from long experience and
2 our judicial system really traces itself back almost a
3 thousand years. We have found from long experience that
4 some testimony and some types of testimony is more reliable
5 and some types of testimony is less reliable in trying cases
6 and, therefore, have developed rules of evidence which de-
7 termine what testimony can be admitted or should be admitted
8 and what testimony should not be admitted for consideration
9 by a jury.

10 The Court had occasion yesterday to instruct
11 you with regard to testimony, specifically with regard to
12 the testimony of the witness, Mr. Walker, who was on the
13 stand, and any statements that he might make as to what a
14 Mister--one of the defendants, Mr. Parks, allegedly made in
15 his presence. And the Court had occasion to instruct you on
16 that occasion about hearsay testimony as to when hearsay
17 testimony would be admitted and considered by the jury and
18 as to when it would not be admitted and considered by the jury.

19 In reading overnight the transcript of the pro-
20 ceedings yesterday, the Court is of the opinion that the,
21 at least as recorded, the instructions were not as clear as
22 the Court would desire that they should be on that point.
23 And for that reason the Court is going to again give those
24 instructions to you.

25 As I stated on yesterday we have a general--and

1 for the record, gentlemen, I'm referring to Page 1530 in the
2 record--we have a general rule of law that hearsay testimony
3 is ordinarily not admissible in court. That is, a statement
4 by a witness on the stand as to what someone outside the
5 court may have said and there is good reason as to why there
6 should be such a rule of law because it is generally proper
7 and desirable and more reliable in a case that everyone comes
8 in and gives his own statement or testifies as to matters
9 upon which he or she can be examined and can be cross-examined
10 rather than having some witness on the stand telling what
11 someone else said outside the courtroom.

12 So, for that reason we have a general rule of the
13 law of evidence that hearsay statements ordinarily are not
14 admissible in testimony. There are a number of exceptions
15 to that rule, however, wherein hearsay testimony is admissible,
16 wherein one witness is permitted to testify that some third
17 party or a defendant as the case may be may have said outside
18 the courtroom. Under a standard exception to the hearsay
19 rule the testimony as to the statements of the party or one
20 of the parties or one of the defendants may be admissible
21 as to that party or as to that defendant if the said state-
22 ment constituted admissions or declarations against his own
23 interests.

24 That is one exception to the hearsay rule.

25 Another standard under--correction, correction,

1 under another standard exception to the hearsay rule testi-
2 mony as to admissions or declarations against interests by
3 one party may be admissible even as to another party provided
4 that there is other evidence in the case that shows first,
5 that the party making the out-of-court statement was a co-
6 conspirator with the parties or some of them and, second,
7 provided that it appears from other evidence that the state-
8 ments were made in the furtherance of a conspiracy with other
9 parties and while the conspiracy was in existence.

10 Now, the theory underlying this exception to the
11 hearsay rule is that statements of a conspirator made in the
12 furtherance of a conspiracy and while the conspiracy is in
13 effect are in effect the statements of the co-conspirator
14 and if against the interests of the co-conspirator stand on
15 the same footing as admissions or declarations against the
16 co-conspirator's own interests.

17 In other words, the general idea of principal and
18 agent is somewhat related to this. In fact, another standard
19 exception to the rule excluding hearsay testimony is that if
20 the relationship of principal and agent is shown.

End Tk 4 21
Tk 4A fls.

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1 And the agent makes statements within the authority of the
2 agency and while the agency is in effect, those statements
3 can be admitted not only as to the agent but they can also be
4 admitted as to the principal.

5 Likewise, it is statements of a conspirator made
6 out of court can be admitted even though hearsay as to the
7 co-conspirator provided as the Court has pointed out to you
8 that from other evidence it is shown that the party making
9 the statement was a co-conspirator and that the statements
10 were made in furtherance of the conspiracy and during the
11 time that the conspiracy was in existence.

12 Now, to justify offering evidence of this nature
13 at this time the government will be required at some stage in
14 the proceedings of this case by other proof to establish that
15 the defendant Thomas Ewing Parks was a co-conspirator with
16 one or more of the defendants and that the statements in
17 question were made in furtherance of that conspiracy before
18 his out-of-court statements would be admissible as to any
19 other defendant.

20 THE COURT: Therefore, we'll permit the testimony
21 of the witness Mr. Walker as to statements made by, alleged
22 statements made by Mr. Parks, both as to Mr. Parks and as to
23 any other party defendant whom it shall be established by
24 other evidence was a party to a conspiracy with Mr. Parks at
25 the time that the statements were made.

1 I would caution you, however, that you will con-
2 sider this testimony of any statements made by Mr. Parks only
3 as to Mr. Parks until and unless you are satisfied by other
4 evidence in the case at the time of the making of these
5 alleged statements the defendant Thomas Ewing Parks was a co-
6 conspirator of one or more of the other defendants, in which
7 event you may then consider such evidence against any other
8 defendant shown by such other evidence to have been a co-
9 conspirator of the defendant Thomas Ewing Parks.

10 Now, in order that you may understand this
11 instruction properly it is also proper that I should instruct
12 you with regard to a conspiracy and what a conspiracy is.

13 That is what are we talking about when we talk
14 about a conspiracy.

15 A conspiracy is simply an agreement between two
16 or more persons to do an unlawful thing or to do a lawful
17 thing by unlawful means.

End TK 4A
TK 5 fls

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1 The agreement to pursue an unlawful purpose is
2 essential to the existence of a conspiracy, but the agreement
3 need not be expressed or in so many words, it may be implied
4 or tacitly understood between the conspirators and it may be
5 proved by circumstantial evidence or by the proving of other
6 facts from which the existence of a conspiracy may reasonably
7 be inferred.

8 It is not essential to the existence of a con-
9 spiracy that the agreement between the conspirators be formally
10 made by the parties at any one time. If, for example, two
11 persons agree to pursue an unlawful purpose and then a third
12 person subsequently, with the knowledge of the existence of
13 the conspiracy, joins in and assents to the conspiracy, either
14 impliedly or expressly, then all three persons are conspirators
15 in the same conspiracy and the same instruction would apply
16 to any number of alleged co-conspirators.

17 It is not necessary that all of the conspirators
18 ever meet together. All that is required is that each party
19 know of the existence of the conspiracy and that each agree
20 to assist in some manner in the furtherance of the unlawful
21 purpose. Thus, a conspiracy is in the nature of a partnership
22 to violate the law and each conspirator is regarded as the
23 agent of his co-conspirators when a conspiracy is established
24 and for the period of time that the conspiracy may exist or
25 may be shown to exist.

1 It is for this reason that the statements of one
2 conspirator made in the furtherance of a conspiracy are
3 admissible and may be considered as evidence against his co-
4 conspirator or co-conspirators, as the case may be, and pro-
5 vided, as I have indicated to you, that the conspiracy itself
6 is established by other evidence than a statement of the
7 alleged co-conspirator and provided that the statement of the
8 co-conspirator, in this case Mr. Parks, the party whose state-
9 ment is purported to be introduced, is made at a time when
10 the conspiracy was in effect, if you should find that there was
11 a conspiracy, and if you should find that conspiracy was in
12 effect, and so I have instructed you with regard to three
13 exceptions to the hearsay rule, one being the exception where
14 a party, the statement of a party or a defendant against his
15 own interests may be admitted, one being the exception under
16 the rules of law pertaining to conspiracy and one being the
17 exception under the law relating to principal and agent.

18 All right, may we have --

19 MR. HOOKER: (Interposing) I'd like to recall
20 the Witness Walker.

21 THE COURT: All right. Yes, sir, Mr. Branstetter.

22 MR. BRANSTETTER: I would like to enter an objec-
23 tion to the definition given by the Court of the declarations
24 against interests and would like to cite to the Court a number
25 of cases that state that declarations against interests cannot

1 be used where it involves a declaration against criminal
2 interests, it must be proprietary or pecuniary interest and
3 I believe that the Court's instruction was not limited to
4 this sort of declaration against interests as an exception to
5 the hearsay rule.

6 THE COURT: All right.

7 MR. BRANSTETTER: The cases, if I might say --

8 THE COURT: (Interposing) Would you cite, would
9 you give me authority on that?

10 MR. BRANSTETTER: Donnelly versus United States,
11 228 U. S. 243, specifically at page 272.

12 THE COURT: All right.

13 MR. BRANSTETTER: And Neal versus U. S., 22 Fed.
14 2nd, page 52.

15 THE COURT: All right. The Court will want to
16 read those, Mr. Branstetter, and will reserve any action upon
17 your objection at this time.

18 MR. BRANSTETTER: We would, of course, ask for an
19 appropriate instruction after the Court has had an opportunity
20 if the Court agrees with our position.

21 THE COURT: Yes, sir. All right. May we have Mr.
22 Walker return to the witness stand?

23 JAMES T. WALKER,
24 a witness called at the instance of the United States of
25 America, having been previously duly sworn, was recalled and

1 testified further as follows:

2 FURTHER DIRECT EXAMINATION

3 BY MR. HOOKER:

4 Q This is James T. Walker that testified on yester-
5 day?

6 A Yes, sir.

7 Q In connection with your conversation with the
8 Defendant Parks, I want to ask you to state if on any occasion
9 he mentioned a sum of money to you?

10 MR. BRANSTETTER: May it please the Court, this
11 is leading. We went through this yesterday, the Court in-
12 structed counsel.

13 MR. HOOKER: If your Honor please, that is not a
14 leading question. You have got to direct the witness'
15 attention to the matter that you are inquiring about.

16 THE COURT: Let me hear counsel for the defendants.

17 MR. BRANSTETTER: May it please the Court, I
18 understand the leading question to be thus, one where it calls
19 for a simple yes or no answer or, two, when it assumes the
20 matter in issue or when it suggests the answer to the witness,
21 those three points.

22 MR. HOOKER: I concede when it suggests an answer.
23 We submit this does not suggest any answer, this just directs
24 the witness' attention to the point of inquiry.

25 THE COURT: I believe I will overrule the objec-

1 tion.

2 BY MR. HOOKER:

3 Q Do you understand the question?

4 A An amount was mentioned in the course of conversa-
5 tion.

6 Q What did he say?

7 MR. HAGGERTY: I object to it unless it fixes the
8 time and place of this conversation.

9 MR. HOOKER: When was it?

10 MR. HAGGERTY: Just a moment, if I may complete
11 my objection.

12 MR. HOOKER: All right.

13 MR. HAGGERTY: We are entitled to know where there
14 are a number of conversations in order to meet any statement
15 of this kind, we are entitled to know the time and the place
16 where there are a series of conversations. This is just
17 picked out of all of the conversations.

18 THE COURT: I will sustain your objection, Mr.
19 Haggerty.

20 BY MR. HOOKER:

21 Q Do you recall what time it was that this conversa-
22 tion took place, that is, about what time?

23 A About the first time that Mr. Parks came to my
24 residence and we talked in the car.

25 Q Was that at a time when the other trial in which

1 Mr. Hoffa was involved was in progress in Nashville?

2 A Yes, sir.

3 Q And you say it was about the first visit?

4 A Yes, sir.

5 Q What did he say about a sum of money?

6 A If Mr. Fields could be contacted they would be
7 willing to pay up to at least \$10,000 to talk to him.

8 Q Mr. Fields?

9 A Yes, sir.

10 Q Was that Mr. Gratin Fields that was on the jury?

11 A Yes, sir.

12 Q Now, after the indictment was returned in this
13 case, did you have a telephone conversation with the
14 Defendant Parks?

15 A Yes, sir.

16 Q How long was it after the indictment was returned,
17 if you recall?

18 MR. SCHIFFER: Objected to, your Honor.

19 A I don't recall.

20 MR. SCHIFFER: May I inquire, is Mr. Hooker
21 referring to the indictment in this case?

22 MR. HOOKER: In this particular case, yes.

23 MR. SCHIFFER: Then, your Honor, I object to the
24 question on the ground that it is completely violative of the
25 rules which we have discussed just before the jury returned.

Walker - Direct

1 MR. HOOKER: Offered as to the Defendant Parks
2 only, if your Honor please.

3 MR. SCHIFFER: Even as to Mr. Parks unless the
4 conspiracy itself was first shown, those post-statements
5 cannot be put in evidence.

6 THE COURT: Ladies and gentlemen, you would not in
7 any event consider any statement made by or statement alleged
8 to have been made by Mr. Parks after the indictment in this
9 case or at any time after the conspiracy, if there was a
10 conspiracy, seeks to exist as to any other defendant, any
11 statement made by or alleged to have been made by Mr. Parks
12 after the conspiracy, or alleged conspiracy, if there was a
13 conspiracy, seeks to exist would not be admissible, would not
14 be considered by you as to any other party defendant in the
15 case and would be considered by you only as to the defendant
16 Mr. Parks to the extent that it might or might not reflect
17 any consciousness of guilt upon his part. You would not con-
18 sider it, however, as to any other defendant.

19 MR. SCHIFFER: May I, your Honor, at this time
20 ask your Honor to also instruct the jury that until the con-
21 spiracy is shown they may not give any consideration at all
22 to the answer to the question which is now put to the witness
23 and to that question for the ground already stated. I
24 sincerely object.

25 THE COURT: All right. I believe that former

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Walker - Direct

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instructions of the Court with regard to those matters are

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appropriate and will be sufficient.

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Walker - Direct

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1 BY MR. HOOKER:

2 Q About when did you have this telephone conversa-
3 tion with the Defendant Parks?

4 A I am not sure which time that he is talking
5 about, Your Honor.

6 Q I'm talking about a telephone conversation. You
7 testified before the Grand Jury, didn't you?

8 A Yes, sir.

9 Q I am talking about a telephone conversation that
10 you had with the Defendant Parks after the indictment was
11 returned in this present case that we are trying.

12 A He called me sometime afterwards and stated that
13 he wanted to see me and when would I be available and I told
14 him I was working in the afternoons and he asked if I could
15 come down to the office--, and Mr. Osborn's office--, that
16 they would--, wanted to see me to take care of me there and--

17 Q (Interposing) Wanted to what?

18 A See me and to take care of me there.

19 MR. SCHIFFER: Your Honor, I respectfully--

20 A (Interposing) And--

21 THE COURT: (Interposing) Yes, sir.

22 MR. SCHIFFER: I respectfully move at this time
23 that the question be stricken, the answer be stricken, and
24 I ask for the removal of the jury for a mistrial upon the
25 ground that the very testimony which is being adduced from

1 this witness by Mr. Hooker is so prejudicial, particularly
2 in view of the fact that no conspiracy has been shown, and
3 Mr. Hooker, by his very question, has indicated he is
4 referring to a time when the conspiracy, in any event on
5 this record, had to have been completed many months before
6 the date on which he is directing this question to this
7 witness.

8 THE COURT: All right. Ladies and gentlemen, the
9 Court has instructed you this testimony would be considered
10 by you only as to the Defendant Mr. Parks and only as it
11 might or might not reflect upon his consciousness of guilt
12 in any regard to the matters of which he is charged in the
13 third count of the indictment.

14 BY MR. HOOKER:

15 Q Now, start over again and tell about the
16 conversation with the Defendant Parks.

17 MR. SCHIFFER: Objected to, Your Honor, it has
18 already been asked and answered.

19 MR. HOOKER: Well, the jury can't get the sense
20 of it, if Your Honor please--

21 MR. SCHIFFER: Well, if Your Honor please--

22 MR. HOOKER: (Interposing) With constant
23 interruptions.

24 MR. SCHIFFER: That would be compounding the very
25 error of which I have made complaints, Your Honor. I

1 respectfully submit to Your Honor it would be unfair to have
2 this again repeated, which is the most prejudicial kind of
3 evidence that can be given to a jury in complete violation,
4 if Your Honor please, of the rules as set down by the upper
5 courts.

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1 THE COURT: Well, let the witness proceed with
2 his answer. He stated--, do you recall what portion of the
3 conversation you had related, Mr. Walker?

4 THE WITNESS: I was telling about his calling me
5 and asking me to come downtown to the office, lawyer's office,
6 which was Mr. Osborn's office at that time he told me. And
7 if I may come down the next day around twelve o'clock.

8 BY MR. HOOKER:

9 Q What else did he say?

10 A That we will take care of you down there.

11 Q Take care of you down there?

12 A Yes, sir.

13 Q Was there anything said to you about who you had
14 talked to?

15 A Oh, I was asked--

16 MR. SCHIFFER: (Interposing) Object again, Your
17 Honor, this is pure hearsay and this bears no position to
18 give that answer. That is not said in the presence of the
19 Defendant Parks, Your Honor.

20 MR. HOOKER: Said by the Defendant Parks, if Your
21 Honor please. This is the conversation between this witness
22 and the Defendant Parks. And I want to direct his attention
23 to the fact whether anything was said to him about who had
24 talked to him at that time.

25 MR. SCHIFFER: Your Honor, I believe it is a

1 leading question and I certainly stand on the grounds put
2 forth by Mr. Branstetter which governed the rules on leading
3 questions. Now, Mr. Hooker I believe can ask any question
4 he wants providing he doesn't lead the witness and they are
5 proper questions within the rules of evidence but for Mr.
6 Hooker to assume in the question and in the very verbiage
7 question testify in the place of the Defendant, is something
8 I object to because that is the kind of leading questions
9 he insists upon, Your Honor.

10 MR.HOOKER: I'm not leading him. I'm trying to
11 refresh his recollection by directing his attention to one
12 particular subject and that is whether or not he said
13 anything to him about who this witness had talked to. That
14 is, whether Parks said anything to him about that.

15 THE COURT: I will let you ask him what the
16 conversation was. I will sustain the objection.

17 BY MR. HOOKER:

18 Q Well, was there anything else in the conversation
19 that I have asked you about?

20 A I was asked if the federal authority had talked
21 to me.

22 Q If who had talked to you?

23 A If the federal authority had talked to me.

24 MR. SCHIFFER: I didn't get the answer. May we
25 have it read back?

1 THE WITNESS: I was asked if the federal authorities
2 had contacted me or talked to me.

3 BY MR. HOOKER:

4 Q You were asked by whom?

5 A By Parks.

6 Q Was that this same conversation about going to
7 the lawyer's office?

8 A Yes, sir.

9 MR. HOOKER: That is all.

10 THE COURT: Just a moment, Mr. Walker.

11 MR. SCHIFFER: May I have read back, please, the
12 last prior answer?

13 THE COURT: Let's try to speak one at a time,
14 gentlemen. It makes it not only difficult for the reporter,
15 but also for the Court and jury and everyone.

16 (Thereupon, the reporter read back as follows:)

17 "Question: Well, was there anything else in the
18 conversation that I have asked you about?

19 "Answer: I was asked if the federal authorities
20 had talked to me.

21 "Question: If who had talked to you?

22 "Answer: If the federal authorities had talked
23 to me."

24 MR. SCHIFFER: May we proceed, Your Honor?

25 THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. SCHIFFER:

Q Mr. Walker, you have recited what you say Parks' conversations were with you and your conversations with Mr. Parks. And something to the effect about a conversation you say you had with Mattie Leath. Now, would you tell this Court and jury please did you believe at any time that you and Mr. Parks were engaged in any unlawful endeavor?

MR. HOOKER: We object to that as calling for his opinion and being immaterial.

THE COURT: Overruled.

THE WITNESS: If I understand you correctly, you want to know if I felt that I was engaged in anything unlawful?

BY MR. SCHIFFER:

Q That you and Mr. Parks were engaged in doing something illegal?

A Well, at the time, not being in conversations with Mr. Parks, I didn't know especially when he was talking to his son, I didn't know what was said.

Q I didn't ask you that, Mr. Walker. Would you please answer my question?

A You better explain the personal situation as to how I felt about it.

Q I didn't hear you, Mr. Witness, may we have what

1 the witness said read back?

2 A You were asking my personal opinion as to how I
3 felt? Is that right?

4 Q I am asking you, sir, if you would kindly listen
5 to the question, you recited about your conversation with
6 Mr. Parks, and with Mattie Leath, isn't that correct?

7 A Yes.

8 Q From the very inception, the very time you had
9 this very first conversation with Mr. Parks, did you believe
10 that you and he were engaging in doing something unlawful?

11 A Through the conversation, no.

12 Q Did you yourself do anything unlawful with Mr.
13 Parks?

14 MR. HOOKER: We object to that.

15 THE WITNESS: No, sir.

16 MR. SCHIFFER: The answer is, no, he has answered
17 the question.

18 BY MR. SCHIFFER:

19 Q Did you agree with Mr. Parks that you would try
20 to influence, corrupt and impede a petit juror, trial juror
21 by the name of Gratin Fields in the case in Nashville in
22 1962?

23 MR. HOOKER: If Your Honor please, this is a
24 clear invasion of the province of the jury. This witness
25 can't be asked here what is his opinion about what the

1 meaning of these acts were. The facts speak for themselves.

2 MR. SCHIFFER: I speak of his intent, Your
3 Honor, which is also before the jury.

4 MR. HOOKER: We have proven here what was said
5 and that is for the jury to pass on whether that amounts to
6 an obstruction of justice, attempt to obstruct justice.

7 THE COURT: It is for the jury to pass upon the
8 question as to whether there has or has not been a violation
9 of any federal statutes in accordance with the instruction
10 of the Court. The Court will allow this testimony as it may
11 or may not reflect upon the state of mind of this witness if
12 the state of mind of this witness is a matter--, a matter
13 of material concern in the case.

14 BY MR. SCHIFFER:

15 Q Would you kindly answer the question, Mr. Walker?

16 A Repeat your question, please.

17 Q Did you agree with Mr. Parks that you and he would
18 try to influence, corrupt, or impede a trial juror by the
19 name of Gratin Fields in the case at Nashville in 1962?

20 A No.

21 Q You are a law officer of the Metropolitan Police
22 of the City of Nashville, isn't that correct?

23 A Yes.

24 Q And you know your duties as a police officer, do
25 you not?

1 A Yes.

2 Q And having had these conversations with Mr. Parks
3 and Mattie Leath and Carl Fields, as a result of all these
4 conversations and with great particularity concerning Mr.
5 Parks, you never made a report about these occurrences to
6 the police department in the City of Nashville, did you?

7 A To the city police department?

8 Q Yes, sir.

9 A No, but may I explain, Your Honor?

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1 Q Well, I will give you a chance to explain, let me
2 finish the question.

3 MR. HOOKER: Let him explain. He has got a right
4 to explain that answer, if your Honor please.

5 THE COURT: Of course, he may explain.

6 MR. REDDY: Certainly he may explain.

7 THE WITNESS: No, to the local authorities I
8 did not, but to the government officers I did contact them.

9 BY MR. SCHIFFER:

10 Q Now, it is a fact, is it not, that at the time
11 when you made the statements to other authorities and I speak
12 of authorities other than the city police, the government
13 agents had already come to you, isn't that a fact?

14 A That is true.

15 Q That is true?

16 A May I explain one other thing? Nothing in my
17 presence had been done, conversations.

18 Q You say nothing in your presence had been done,
19 you have already testified. I am trying to follow your
20 testimony. And that everyone in this courtroom and particular-
21 ly His Honor and the jury members of this jury will understand
22 your testimony the way you give it, you see.

23 A Your Honor, may I finish explaining?

24 THE COURT: Yes, you may finish.

25 THE WITNESS: The conversation between Carl and

1 Mr. Parks, I was not present. The conversation between Miss
2 Leath and I was merely asked if her brother had discussed it
3 with her. No other conversation.

4 BY MR. SCHIFFER:

5 Q Now, let us come down there to your specific
6 testimony concerning Mr. Parks about your conversations with
7 Mr. Parks. After Mr. Parks, as you have related, came to you
8 and for the first time he related to you that he showed or
9 he had some kind of interest in Gratin Fields who was a juror
10 in this case in 1962 in Nashville, did you at that time after
11 his conversation with you go to the federal authorities and
12 report to them that Mr. Parks had made this statement to you?

13 A No.

14 Q You did not?

15 A No.

16 Q Did you go to the FBI voluntarily and disclose
17 this information?

18 A My statements were voluntary, yes.

19 Q I say, at this time immediately following the
20 conversation?

21 A No.

22 Q Following the conversation with Mr. Parks?

23 A No.

24 Q You did not as a matter of fact, isn't it true
25 that while these conversations took place during the trial of

1 the case in October, November, or December 1962, the fact is
2 you never had a conversation with any officer representing the
3 federal government until the middle of April of 1963?

4 A I don't recall the dates.

5 Q Well, you remember the date you spoke to Mr.
6 Sheets of the FBI, do you not?

7 A I talked to Mr. Sheets.

8 Q Yes. Now, isn't it a fact your best memory as
9 you sit here that it was at least four, five, or six months
10 after Mr. Parks had come to you and had his first conversation
11 with you?

12 A I am of the opinion it was earlier than that. I
13 am not sure. I don't recall the dates.

14 Q However, until Mr. Sheets came to you for the
15 first time, you had no contact with the federal government
16 concerning this matter?

17 A No, sir.

18 Q In 1962?

19 A No, sir.

20 Q Of Mr. Parks talking with you about Gratin Fields,
21 is that correct?

22 A Yes. Yes, sir.

23 Q And during all of this time whatever it may have
24 been from October and November and December, 1962, in Nash-
25 ville, you were a police officer, were you not?

1 A Yes.

2 Q At that time and you were carrying on these
3 conversations which you related and so I take it then as a
4 firm answer of yours that from the first conversation you had
5 with Mr. Parks about Gratin Fields as you state up to the time
6 when you first saw Mr. Sheets of the FBI, you made no report
7 to any federal authority concerning your conversations as you
8 have related them of Mr. Parks and yourself about Gratin
9 Fields?

10 A No. I would like to explain further. As I say,
11 nothing had been done other than the conversation.

12 Q Would you kindly listen to my question, I will
13 try to clarify it a bit more. If you don't understand my
14 question, please, I implore you, ask me and I will try to
15 simplify it. We just want to make sure we understand your
16 answers to the particular questions asked.

17 I take it then your testimony is unequivocal that
18 from October, November, and December, 1962, in Nashville
19 when you had your first conversation with Mr. Parks as you
20 have testified, about Gratin Fields the juror, in that case
21 in Nashville, that until the time when you saw Mr. Sheets and
22 conferred with him, at least up to that date, you never made
23 a report or complaints to anyone representing the federal
24 government?

1 THE WITNESS: Your Honor, I have answered no to
2 that.

3 Q Pardon me.

4 A I have answered no to that.

5 Q When you say "no", I don't understand your
6 answer. You mean that I am incorrect or did you make a
7 complaint to someone in the federal government before you
8 saw Mr. Sheets?

9 A No.

10 Q So that your answer is, I take it, is you made
11 no complaint to anyone until you were interviewed by Mr.
12 Sheets?

13 A That is right.

14 Q And to refresh your memory, if I tell you that
15 it was approximately the 28th or 29th of March of '63, and
16 the first day of April of 1963.

17 A I don't recall.

18 Q Will that refresh your memory if I give you
19 those dates?

20 A I don't recall the dates.

21 Q It was some months after the trial was over in
22 Nashville?

23 A I don't recall the dates, sir.

24 Q I am saying as a matter of time it was months
25 after the jury had been discharged in Nashville in the case

1 in which Mr. Gratin Fields was a juror?

2 A I still don't recall.

3 Q You don't?

4 A No.

5 Q Your memory does not go back that far, one year?

6 A Well, possibly, but the dates on it I do not
7 recall.

8 Q I am not speaking of dates now but I will move
9 to another subject so we can save some time. Just one point.
10 Isn't it true and the whole truth and nothing but the truth
11 that when you introduced Carl Fields to Mr. Parks, the
12 defendant, there was only one purpose in your making the
13 introduction and that was for the purpose of securing a job
14 for Carl Fields?

15 A That is correct.

16 Q There is no question about that, is there?

17 A No.

18 Q Now, would you kindly tell us how long have you
19 been a member of the police department, Metropolitan Police
20 Department in Nashville?

21 A Since April of the Metropolitan Police Department.

22 Q And how long have you been a police officer in
23 Tennessee?

24 A About three and a half years.

25 Q Now, have you had any college training?

- 1 A I have.
- 2 Q Would you kindly tell us what that is?
- 3 A B.S. degree and a few hours.
- 4 Q What school is that?
- 5 A B.S. degree.
- 6 Q In what school?
- 7 A A and I Tennessee State University.
- 8 Q Have you had further training beyond your B.S.
- 9 degree?
- 10 A Yes.
- 11 Q What would that be?
- 12 A A few hours on a master's.
- 13 Q Toward your master's?
- 14 A Yes.
- 15 Q In what subject?
- 16 A Business.
- 17 Q In business administration?
- 18 A (Witness moves head up and down.)
- 19 Q And would you tell us, after all you are the
- 20 best judge of this next question, do you have a good memory?
- 21 A Yes, I would say so.
- 22 Q All right, sir. Did you ever have any special
- 23 police training?
- 24 A No.
- 25 Q Were you with the sheriff's office at any period?

1 A Was I what?

2 Q With the sheriff's office?

3 A Yes, I was.

4 Q And was it the Davidson County?

5 A That's right.

6 Q Now, you stated that you know the Defendant
7 Thomas Ewing Parks.

8 A (Witness moves head up and down.)

9 Q Would you kindly tell us how long you have known
10 him?

11 A Oh, approximately five or six years.

12 Q Did you ever tell anybody, anybody at all, and
13 I ask you to call upon your own good memory as you told us
14 you have, did you ever tell anybody that you knew Parks,
15 speaking of last year, for two years?

16 A I don't recall.

17 Q You have no recollection of telling anybody that?

18 A I don't recall.

19 Q Did you have a conversation on April the 1st
20 with Mr. William L. Sheets of the Federal Bureau of Investi-
21 gation?

22 A I did.

23 Q And did you tell him when he asked you that you
24 knew Parks for about two years?

25 A I don't remember whether I told him that or not.

1 Q Now, if Mr. Sheets' records indicate that that
2 is what you told him, would you claim that that was the truth
3 of what you had said to him?

4 A Yes, if his records say that.

5 Q Would you say that with regard to Mr. Sheets'
6 status as a member of the Federal Bureau of Investigation
7 anything that you would tell him was the truth?

8 THE WITNESS: May I explain here?

9 THE COURT: Yes.

10 MR. SCHIFFER: I am just asking first for a yes
11 or no answer, then you may explain. Now, my question is--

12 MR. HOOKER: (Interposing) Let him answer, if
13 your Honor please.

14 MR. SCHIFFER: I want him to answer yes or no,
15 if he can, and then explain.

16 BY MR. SCHIFFER:

17 Q Now, may I repeat the question? Do I take it
18 that you, as a police officer, being interrogated by a
19 member of the Federal Bureau of Investigation, in this case
20 Mr. Sheets, that if he interrogated you about any kind of
21 a subject that because he was an FBI investigator repre-
22 senting our government that you would tell him the truth?

23 A Yes, I was telling him the truth. Now, may I
24 explain?

25 THE COURT: Yes.

1 A The situation was this, as to how long had I
2 known him casually or as a mutual friend.

3 Q Pardon me, I didn't hear.

4 A I had known him casually for six years.

5 Q You have known him, Mr. Sheets, casually?

6 A No, not Mr. Sheets, the question was Mr. Parks,
7 I believe, right?

8 Q Yes.

9 A All right. I have known him casually, seeing
10 him in and around the city and what-have-you for approximately
11 five or six years. You didn't ask me how long had I known
12 him well enough to say that I had known him, just actually
13 knowing him, more than likely the question was leading when
14 Mr. Sheets asked me as to how long I had actually known him.

15 Q So you have known him intimately then?

16 A Five or six years.

17 Q As related to Mr. Sheets last year for two years?

18 A I have known him casually for five or six years.

19 Q Casually for five or six years but within the
20 last two years of that period when you spoke to Mr. Sheets
21 you knew Mr. Parks intimately?

22 A Yes, because where he used to work at the funeral
23 services we used to escort funerals and naturally I became
24 to know him much better at that time.

25 Q I see. And so you knew Mr. Parks fairly well

1 at this time, did you not?

2 A That's right.

3 Q When you spoke to Mr. Sheets--now, how many times
4 actually have you spoken with anybody connected with or
5 representing the Federal Bureau of Investigation?

6 A At which time?

7 Q Pardon me, sir?

8 A At which time are you speaking of?

9 Q About this case with Gratin Fields commencing
10 with the time when Mr. Parks had his first conversation with
11 you about Gratin Fields.

12 A The time he had his first conversation I had no
13 contact with the FBI.

14 Q I say, commencing with that date in '62.

15 A Up until now?

16 Q Up to the time you just took the witness stand.

17 A Oh, several times.

18 Q When you say "several", could you assist the
19 jury and his Honor and myself, please, by trying to fix an
20 actual number of times, if you can?

21 A Maybe a dozen times.

22 Q Pardon me?

23 A Maybe a dozen times.

24 Q About a dozen times?

25 A Maybe a dozen times.

1 Q I see. And would be from commencing some time
2 last year in 1963 to the present date, is that correct?

3 A That's right.

4 Q Now, when you would sit down or stand or whatever
5 it was, can you tell us first where these meetings took place?

6 A Some of them were in the office, some by tele-
7 phone and on the first occasion in my home.

8 Q In your own home?

9 A Yes.

10 Q Those interviews which took place in your own
11 home, would anybody in your family be present?

12 A No.

13 Q While anybody from the FBI spoke with you?

14 A No.

15 Q Now, when you would be interviewed by the FBI
16 could you tell us how many agents would speak with you in
17 these interviews?

18 A One or two.

19 Q Well, would you tell us the approximate 10 or
20 11 or 12 times you have indicated you had conferences with
21 them?

22 A One or two people.

23 Q One or two people on each of those occasions?

24 A (Witness moves head up and down.)

25 Q Were there more times when there were two?

1 A Were there what?

2 Q Were there more times when they spoke with you
3 when there were two men rather than one single man?

4 A I wouldn't say that.

5 Q About even split then?

6 A No, I wouldn't say that.

7 Q Well, what would you say?

8 A It would be hard to figure out, your Honor, as
9 to the period of time as to how many people actually spoke
10 to me in a period of time.

11 Q Were there ever times when there were more than
12 two?

13 A No.

14 Q Never. Were there ever times when there might
15 have been one or two FBI agents whom you recognized from
16 prior experience with them and other people present at the
17 time you were being interviewed?

18 A Possibly in the next office or something.

19 Q No, I mean in your presence?

20 A No.

21 Q Did you ever speak with Mr. Hooker about this
22 case?

23 A Yes, I have talked to Mr. Hooker.

1 Q Did you speak with Mr. Neal about this case?

2 A I have talked to Mr. Neal.

3 Q Did you talk with Mr. Shaffer, Assistant Attorney
4 General, about this case?

5 A I have talked to Mr. Shaffer.

6 Q Did you speak with Mr. Walter Sheridan, the chief
7 investigator for the Attorney General of the Department of
8 Justice?

9 A I don't recall talking to him, I may have.

10 Q Well, would you kindly just think a little bit
11 and tell us whether you can, whether you did or whether you
12 did not?

13 A I don't recall whether I talked to him or not.

14 Q When Mr. Shaffer interviewed you, was Mr. Sheridan
15 present and listening?

16 A May have been, I don't recognize the name.

17 Q You don't know the name but he may have been?

18 A He may have.

19 Q And there were times when you were being inter-
20 viewed when there were much more than two people present at
21 any rate?

22 A I don't recall that.

23 Q You have no idea?

24 A Ever talking to over two.

25 Q And your memory is good?

1 A At any one particular time.

2 Q Now, then let's come down to the next time you
3 had an interview in this entire matter. Now, that would go
4 sometimes, as you have answered before, April 1st with Mr.
5 Sheets in 1963. Now, where was that meeting held?

6 A In my residence.

7 Q And did Mr. Sheets come down alone?

8 A No.

9 Q Who came with him?

10 A Mr. Disspayne.

11 Q Mr. Disspayne?

12 A Yes.

13 Q Does he hold an official position?

14 A Yes.

15 Q In the government?

16 A Marshal.

17 Q He is a United States Marshal?

18 A Yes.

19 Q Is he attached to the FBI?

20 A That's right.

21 Q Pardon me?

22 A That's right.

23 Q He is also a member of the FBI and he is a
24 marshal?

25 A That's right.

1 Q And can you tell us then was he a special agent
2 with the FBI?

3 A I don't know that.

4 Q Pardon me?

5 A I am not in position to say that, I don't know.

6 Q When you say he is a member of the FBI, I was
7 wondering what office he held?

8 A I am taking it if he is a marshal he would be a
9 part of the FBI.

10 Q As a marshal he is part of the FBI?

11 A I am taking it as a marshal he would be.

12 Q In other words, you don't know but you are assuming
13 that. And so Mr. Disspayne came along the very first con-
14 ference you had with Mr. Sheets?

15 A Yes.

16 Q And that took place in your home?

17 A Yes.

18 Q How long were they there at your residence?

19 A Very short time.

20 Q Pardon me?

21 A A very short time.

22 Q A very short time. And while you were talking,
23 did Mr. Disspayne or Mr. Sheets make any notes?

24 A I am pretty sure they did.

25 Q I am sorry, your voice doesn't carry back.

1 A I am pretty sure they did.

2 Q Thank you. And could you tell me was Mr. Diss-
3 payne also making notes while Mr. Sheets was writing?

4 A As a law enforcement officer and investigator
5 I am pretty sure they made notes, I couldn't say that both of
6 them were making notes.

7 Q At least one of them was?

8 A I am pretty sure they was.

9 Q You think that Disspayne at some time or another
10 was also making notes?

11 A No, I didn't say that.

12 Q You didn't say that?

13 A No.

14 Q And this meeting lasted for a short time, you say?

15 A Yes.

16 Q And after he made his notes, Mr. Sheets, did he
17 ask you to look at his notes?

End 7A
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Walker-Cross

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1 A No.

2 Q Never showed you the notes?

3 A Not at that time.

4 Q Not at that time?

5 A No.

6 Q And did there come a time when Mr. Sheets said
7 to you, after that conference was concluded at your home,
8 that he would like you to sign anything?

9 A Not at that time.

10 Q Not at that time?

11 A No.

12 Q Your Honor, at this point may I respectfully
13 request the government to produce, counsel to produce for
14 the government, the original notes taken by Mr. Sheets under
15 the Jencks law and produce them here for our examination.

16 MR. NEAL: May it please the Court, while we did
17 not have to, we produced the statements of this witness
18 several days ago I believe as a matter of fact Sunday night,
19 if I'm not mistaken, produced them for Mr. Haggerty, we at
20 our own expense made a number of copies for each counsel.
21 Now, Mr. Schiffer is talking about the original notes. My
22 understanding is as we explained in the conference in
23 chambers that the FBI agents, if he takes notes of interview,
24 he will take those notes back to his office. He will
25 dictate a statement of the substance of the interview. He

1 will then give that statement to a secretary. When the
2 secretary types it up, he will compare that statement with
3 his original notes to make sure that the typed statement is
4 then accurate. And at that time he has no further need for
5 his original notes and he destroys them.

6 THE COURT: Do you have the original notes with
7 regard to this witness?

8 MR. NEAL: No, I do not, Your Honor. I will be
9 happy to check with the particular agent and see if he does.
10 Would Your Honor want that?

11 THE COURT: Yes, sir.

12 MR. SCHIFFER: Your Honor, to save time of Your
13 Honor and the jury not to lose any time, may I ask the same
14 request of all original notes of all the conferences which
15 the FBI or anybody else representing the government made and
16 took at any time they interviewed this gentleman. I under-
17 stand there are at least about a dozen times I would like
18 to inquire about all the dozen times.

19 MR. NEAL: Your Honor, the witness mentioned that
20 some of those times were over the telephone. He did not
21 indicate that there was a conference each time. That is my
22 understanding of the witness' testimony. Telephone calls.

23 MR. SCHIFFER: Of all the times, telephone calls,
24 the substance of what the agent wrote down.

25 THE COURT: Any matters pertaining to any other

1 witness than this witness is a matter within the discretion
2 of the government. The Court would have nothing to do with
3 that at this time.

4 MR. SCHIFFER: I was speaking only about this
5 one witness at this time, Your Honor.

6 THE COURT: All right.

7 MR. SCHIFFER: Included were with the request,
8 Your Honor, would be the notes made by any official of the
9 federal government, including those in the Attorney General's
10 office, any of his special assistants, any attorney who made
11 a record of the conference he had with this witness con-
12 cerning this case.

13 THE COURT: All right.

14 BY MR. SCHIFFER:

15 Q Now, then, you had this first conference with
16 Mr. Sheets of the FBI and Mr. Disspayne was there present in
17 your home?

18 A (Witness moves head up and down.)

19 Q Now, what room was this conference held in?

20 A We were in their car in the back yard of my
21 residence.

22 Q You were in an automobile in front of your
23 residence?

24 A Back yard.

25 Q Back yard of your residence, well, when you say

1 back yard of your residence, were you attempting to hide from
2 someone?

3 A No. The location of my residence, I couldn't
4 possibly hide from anyone.

5 Q Well, was there some reason why you didn't go
6 into your home to have the conference?

7 A No. When they came up, I saw them out and walked
8 out to see who they were. I didn't know them.

9 Q Then you were invited into the automobile with
10 them.

11 A That's right.

12 Q Now, what was the position of the three of you
13 in this automobile when they pulled up and you got in?

14 A Well, they were driving a two-door automobile.
15 I got in the back. And I believe Mr. Sheets got in the
16 back with me.

17 Q And Mr. Sheets, whatever notes he made were made
18 while sitting next to you right in the car?

19 A Yes, sir.

20 Q You didn't see what he was writing?

21 A It was shorthand. I couldn't tell.

22 Q And you held this conference, did anybody from
23 your family witness this conference?

24 A No.

25 Q Nobody else got into the car?

1 A No.

2 Q And the tone of voice you used I would assume
3 nobody in the house or anywhere near the car could hear what
4 you people were talking about?

5 A That's correct.

6 Q Is that correct?

7 A That's correct.

8 Q Now, then, you knew at the time you spoke with
9 Mr. Sheets he was an FBI agent or special agent?

10 A He presented his credentials.

11 Q And you knew that Mr. Disspayne was a United
12 States marshal?

13 A Yes.

14 Q And you have already related that whatever so far
15 as you are concerned, if you make a statement to a
16 representative of the FBI, you tell them the truth, isn't
17 that right?

18 A Right.

19 Q All right, sir. And so you completed that
20 statement and I guess you got out of your car and they drove
21 off. Is that right?

22 A No, I was not in my car.

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End Tk8

T 8A
fill.

1 Q In their car?

2 A That's right.

3 Q I say, you got out of their car?

4 A That's right.

5 Q And they drove off?

6 A That's right.

7 Q Now, how long after this very first conference
8 that you had with Mr. Sheets and Mr. Disspayne did you have
9 a second conference with anyone representing any division of
10 the federal government concerning this matter?

11 A I talked to Mr. Sheets another time shortly after
12 that.

13 Q Could you fix the time and place for us, sir?

14 A I believe we talked at Mr. Sheets' office.

15 Q I didn't quite hear that. You drop your voice,
16 unfortunately.

17 A At Mr. Sheets' office.

18 Q Mr. Sheets' office?

19 A Yes, sir. That's right.

20 Q Did he call you or you call him to come over?

21 A I don't know. I may have called him. I'm not
22 sure.

23 Q You think you called him?

24 A One or the other.

25 Q Well, do you recall why it was that you would be

1 calling him instead of him calling you?

2 A I believe there had been -- well, wait a minute.

3 He may have called me. I don't know.

4 Q You are not certain?

5 A One or the other, he may have called me.

6 Q And in response to his telephone call, why, you
7 came over to his office?

8 A Yes.

9 Q In the Federal Building in Nashville?

10 A Yes.

11 Q Did you go there alone?

12 A Yes.

13 Q And you couldn't tell us how long actually it was
14 after the first conference you had with him in his car?

15 A No. No.

16 Q It had been a week or ten days or a month?

17 A Well, probably a week or so.

18 Q About a week?

19 A Yes.

20 Q And your memory is good, and sufficient to suggest
21 that to you that to the best of your recollection it was
22 about a week later?

23 A Something like that.

24 Q That you got this call or you called him and you
25 went over to see him in his office?

1 A Yes, sir.

2 Q And when you came to his office now, who else
3 was present when he spoke with you?

4 A Not being familiar with the faces there and none
5 of the names, I don't recall who it was. It may have been Mr.
6 Sheridan or it may have been someone else.

7 Q It may have been Mr. Sheridan or may have been
8 someone else?

9 A Yes, sir.

10 Q But drawing upon your best recollection as you
11 sit here now, is it your best recollection that whoever was
12 there was introduced to you as a Mr. Sheridan or someone else
13 representing the federal government?

14 A That's right.

15 Q Is that correct?

16 A That is true.

17 Q Drawing upon your best memory at this time, was
18 it another special agent of the FBI present?

19 A I remember two people.

20 Q There were two people?

21 A That's right.

22 Q And during this second conference now with Mr.
23 Sheets at his office there were never more than two people
24 present?

25 A Mr. Sheets and one other. At that particular

1 conference. I went into another room and there were two
2 others, but at any one time I talked there were more than
3 two people at the time.

4 Q You lower your voice unfortunately and I'm
5 terribly sorry. It falls down and I can't get the end of the
6 sentence.

7 A At any particular -- one particular time I don't
8 recall talking to more than, say, two people, at any one
9 time. I recall talking to Mr. Sheets. And I went to another
10 office and talked to two other persons, but I couldn't say
11 that that would be four persons in any one conversation.

12 Q But at all times would Mr. Sheets be present
13 throughout the entire conference?

14 A No.

15 Q Sometimes he would walk out and someone else
16 would substitute for him? Is that right?

17 A I talked to Mr. Sheets, I didn't, I didn't talk
18 to him any more. I talked to someone else.

19 Q He would turn you over to someone else then?

20 A That's right.

21 Q Well, to the best of your recollection, you being
22 a police officer, and being in Nashville for all these years
23 and being acquainted with this case, and the principals in the
24 case, can you draw on your best recollection now and tell us
25 when Mr. Sheets would go out and leave you in the company of

1 others in his office, or his adjoining office, but in the
2 Federal Building, nevertheless, can you tell us who some of
3 those others were?

4 A After I talked to Mr. Sheets and made the state-
5 ment, my contact mostly was with Mr. Sheridan from then on.

6 Q Oh, then, I'm terribly sorry, I misunderstood
7 your prior answer. You mean then that once you made your
8 statement to Mr. Sheets, the special agent of the Department
9 of Justice, the FBI is ---

10 A That's right.

11 Q From then on, any time you spoke with anybody
12 else and all the balance of your conversations you had with
13 officials of the government from that time on, it was Mr.
14 Walter Sheridan you spoke with?

End 8A
9 fls

15 A That's right.
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- 1 Q He was always there, isn't that correct?
- 2 A That's right.
- 3 Q Do you know who Mr. Walter Sheridan is?
- 4 A Beg your pardon?
- 5 Q Do you know who Mr. Walter Sheridan is?
- 6 A Special investigator for the Federal Government.
- 7 Q For who?
- 8 A The Federal Government.
- 9 Q Well, can you better identify him, his specific
- 10 position in the Federal Government?
- 11 A Special investigator.
- 12 Q For whom?
- 13 A For the Federal Government.
- 14 Q Is he listed or do you know him as a special
- 15 investigator, chief investigator for the Attorney General of
- 16 the United States?
- 17 A No, I don't know him as that.
- 18 Q Well, weren't there occasions when you spoke with
- 19 Mr. Sheridan during his conferences and he had told you that
- 20 he was a confidant of the Attorney General?
- 21 A He told me he was special investigator.
- 22 Q Yes. I mean Robert Kennedy, the Attorney General?
- 23 A No, he didn't tell me that, he never mentioned
- 24 that.
- 25 Q Did you at any time ever have a conversation with

1 Mr. Sheridan at any time and the name Robert Kennedy was
2 discussed?

3 A No.

4 Q Never?

5 A No.

6 Q But everything you told Mr. Walter Sheridan
7 likewise was always the truth if he queried you about some-
8 thing, is that correct?

9 A Beg your pardon?

10 Q Every time he queried you or questioned you about
11 something, every time you made a statement to him it was the
12 truth?

13 A Yes.

14 Q Now, how many of these occasions you spoke with
15 him was he writing down and making notes?

16 A Oh, I wouldn't know.

17 Q Well, did he do it at least once?

18 A Sir?

19 Q Did he do it at least once, make a written record
20 of what you were talking about?

21 A At least once, yes.

22 Q At least once?

23 A Yes.

24 Q And when was that once?

25 A As I recall it was the first time I talked to him.

1 Q And could you tell us about when that was when
2 you first saw him?

3 A After I talked to Mr. Sheets.

4 Q That is the first time you came down to see Mr.
5 Sheets at the Federal Building?

6 A That's right.

7 Q Is that right?

8 A That's right.

9 Q Would you say it was a week after Mr. Sheets and
10 Mr. Disspayne had seen you in their automobile at your home?

11 A Approximately, yes.

12 Q Yes. All right. Now, then, at the termination
13 of this interview you had the first time with Mr. Sheridan,
14 you say he was taking notes, did he read you the notes he
15 had written?

16 A The first time with Mr. Sneets?

17 Q No, with Mr. Walter Sheridan.

18 A With Mr. Sheridan? I don't think so.

19 Q You saw him writing?

20 A Yes.

21 Q Did you not?

22 A Yes.

23 Q Did he ask you to sign the writing which he had
24 been writing with a pen or a pencil?

25 A Mr. Sheridan?

1 Q Yes.

2 A No.

3 Q And did he have a secretary there taking down
4 questions and answers, putting his questions and your
5 answers?

6 A No.

7 Q Who else was present when you spoke with Mr.
8 Sheridan?

9 A I don't know the gentleman's name.

10 Q Were there other gentlemen there?

11 A There was one other gentleman, yes.

12 Q One other?

13 A Yes.

14 Q Can you call upon your best memory and tell us
15 whether you had ever seen that individual who was there with
16 Mr. Sheridan in the city of Nashville before or after the
17 case?

18 A No.

19 Q Pardon me?

20 A No.

21 Q Did you only see that gentleman once on that
22 occasion and never see him again?

23 A I don't recall having seen that particular one
24 any more.

25 MR. SCHIFFER: And at this time, Your Honor,

1 Q Yes.

2 A No.

3 Q And did he have a secretary there taking down
4 questions and answers, putting his questions and your
5 answers?

6 A No.

7 Q Who else was present when you spoke with Mr.
8 Sheridan?

9 A I don't know the gentleman's name.

10 Q Were there other gentlemen there?

11 A There was one other gentleman, yes.

12 Q One other?

13 A Yes.

14 Q Can you call upon your best memory and tell us
15 whether you had ever seen that individual who was there with
16 Mr. Sheridan in the city of Nashville before or after the
17 case?

18 A No.

19 Q Pardon me?

20 A No.

21 Q Did you only see that gentleman once on that
22 occasion and never see him again?

23 A I don't recall having seen that particular one
24 any more.

25 MR. SCHIFFER: And at this time, Your Honor,

1 may we include the writings, the original writings and any
2 other writings made by Mr. Walter Sheridan, made by Mr.
3 Walter Sheridan concerning the interviews with this witness?

4 THE COURT: All right.

5 BY MR. SCHIFFER:

6 Q When was the second time that you saw Mr. Walter
7 Sheridan about this case?

8 A I really don't know.

9 Q How long about would you say it was approximately
10 after the first time you saw Mr. Sheridan?

11 A I really don't know.

12 Q Could you approximate it?

13 A I'd be afraid to, I would probably give it to you
14 wrong because I really don't know.

15 Q Well, let's see if we can't assist you. If I
16 told you that the FBI's statement of the report of Mr. Sheets
17 is April 1st of 1963, we know now as of today we are nearing
18 the end of the month of January, isn't that right?

19 A (Witness moves head up and down.)

20 Q And so going back now in your memory from April
21 1st of 1963 to this date, how many times would you say in
22 that period of time that you saw Mr. Sheridan, was it once
23 a month?

24 A No.

25 Q More than once a month?

9-6 . Walker-Cross

1638

1 A No, I didn't actually see him, I talked to him
2 several times over the phone but actually seeing him, I did
3 not.

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1 Q Outside of this first time you spoke with him
2 then personally and you saw him taking down notes the only
3 other contact you say you had with Walter Sheridan was over
4 the telephone?

5 A No, I did not say that.

6 Q I am sorry, I misunderstood you, your answer.

7 A I have actually seen him two or three times since
8 that time.

9 Q Since the first time you saw him?

10 A That's right, two or three times.

11 Q Two or three times?

12 A Yes.

13 Q Now, these other times that you saw him did you
14 confer with him about this subject matter you were discussing
15 with Mr. Sheets?

16 A Yes.

17 Q And did Mr. Sheridan on these other two or three
18 occasions make notes of your conversation of what he was
19 asking you?

20 A Not to my seeing, I did not see him make notes.

21 Q Was there a stenographer present?

22 A No.

23 Q No record was made at all?

24 A I wouldn't be in a position to say whether a
25 record was made.

- 1 Q Where did you see him?
- 2 A Beg your pardon?
- 3 Q Earlier where did you see him?
- 4 A In the Federal Building.
- 5 Q These two or three or four other occasions or
- 6 all together you were always in the Federal Building?
- 7 A With Mr. Sheridan, yes.
- 8 Q Do you know whether a tape recording was made?
- 9 A No, I don't.
- 10 Q Of your conversation with Mr. Sheridan?
- 11 A No, I do not know.
- 12 Q It was never indicated to you, was it?
- 13 A No.
- 14 Q That there was or there was not?
- 15 A It was not.
- 16 Q In other words, they never said whether there
- 17 was or wasn't, you don't know?
- 18 A That's right.
- 19 Q When for the first time did you actually become
- 20 acquainted with the name Walter Sheridan?
- 21 A By whom?
- 22 Q When for the first time did you become acquainted
- 23 with a person known as Walter Sheridan?
- 24 A When I went to the courthouse the first time.
- 25 Q And had you known of his name before you met him?

1 A No, I did not.

2 Q Well, now, in your last talk with Mr. Sheets of
3 the FBI had he told you that you were to return to the Federal
4 Building for a conference with Mr. Sheridan?

5 A No.

6 Q When you came to the Federal Building the first
7 time when you met Mr. Sheridan you met a complete stranger
8 and you had never expected to meet anyone by the name of
9 Walter Sheridan?

10 A That's correct.

11 Q As of the time that you walked into the building,
12 is that correct?

13 A That is correct.

14 Q And I am trying to go back a little bit in your
15 testimony. You did not testify before, and I am relying
16 upon your good memory, you testified before that you didn't
17 know Walter Sheridan?

18 A No, I did not know him, Mr. Sheridan.

19 Q You didn't know the name?

20 A No.

21 Q Did you mean to indicate that you never knew him?

22 A I never had known him.

23 Q Have never known him?

24 A No, other than my first time of seeing him.

25 Q Well, do you recall my asking you a question

1 this morning since I commenced examining you whether or not
2 you had ever had any conferences or talks with Walter Sheridan
3 and you said no.

4 A You asked if I had ever had any talks or con-
5 versations?

6 Q Do you recall my asking you a question within
7 the last hour as to whether you knew or had spoken with
8 Walter Sheridan and your answer was no?

9 A If you asked that I misunderstood your question.

10 Q I see. Well, now, I will try to go slower and
11 make it abundantly clear, but if you don't understand the
12 question kindly indicate it to me so we can get a question
13 and answer and finish with the subject, you see.

14 At any time then when you saw Mr. Walter Sheridan
15 in person and you conferred about this case, outside of the
16 first time, it is your testimony you never saw him take notes?

17 A I don't recall other than the first time.

18 Q And any of these other occasions was there a
19 secretary present taking down dictation?

20 A Not taking notes. I have stood in his office
21 and it's possible his secretary was there, but as far as
22 taking notes--

23 Q (Interposing) I say while he was talking to you,
24 during your conversation with him.

25 A We would be talking but as far as the secretary,

1 I am not conscious of the secretary taking notes.

2 Q I see.

3 A I have seen a secretary in the office.

4 Q Yes. And would you recognize the secretary?

5 A Yes.

6 Q What is her name?

7 A Her last name, I recall--I believe, I believe
8 her name is Carolyn, I am not sure.

9 Q I didn't hear, Carol?

10 A I believe her name is Carolyn, I am not sure.

11 Q Carlton?

12 A Carolyn.

13 Q Carolyn?

14 A Yes.

15 Q And you would recognize her if you saw her,
16 would you not?

17 A I would recognize her, yes.

18 Q Did you have a conversation with her about this
19 case?

20 A Not about the case.

21 Q You just passed the time of day with her?

22 A (Witness moves head up and down.)

23 Q You never saw her taking any notes while you
24 were there conferring with Mr. Sheridan?

25 A A secretary work in the office, I didn't know

1 what she was doing, to my knowledge I would not know whether
2 she was taking notes.

3 Q When you say "A secretary working in the office,"
4 do you know whether or not she comes out of the Washington
5 office of the Department of Justice, this girl you are
6 speaking of?

7 A I don't know where she came from.

8 Q You don't know where she comes from?

9 A No.

10 Q Have you seen her in this building?

11 A Yes, I have.

12 Q Since you have arrived here?

13 A Yes, I have.

14 Q And is she the secretary to Mr. Neal?

15 A I wouldn't know that either.

16 Q What office did you see her in in this building?

17 A I saw her in Mr. Sheridan's office upstairs.

18 Q Mr. Sheridan has his own office here, you tell
19 us?

20 A Well, I went into the building, he was in an
21 office and he was there.

22 Q When you went to look for--

23 A (Interposing) Establishing the fact that his
24 having an office here, I wouldn't know that either.

25 Q When you came to this building was your purpose,

1 the first time you came into this building on this case, your
2 purpose was to speak with Mr. Walter Sheridan?

3 A No, our purpose was to be here for court.

4 Q To meet him in court?

5 A Yes, I was subpoenaed for court.

6 Q Yes, I know that. But the first time you came
7 and you had a conversation with Mr. Sheridan in this building--

8 A (Interposing) I was subpoenaed to court.

9 Q Well, you met him in court here, did you not?

10 A No, I met him in the building here.

11 Q That's my question.

12 A My purpose wasn't to come in and talk to him.

13 Q I didn't get that answer.

14 A My purpose wasn't to come here to talk to him,
15 my purpose was to come to court.

16 Q Yes. But you, nevertheless, though your purpose
17 was to come here to court you did have a conference with
18 Mr. Walter Sheridan?

19 A I talked to him, yes.

20 Q About the case, isn't that right?

21 A No, I haven't talked to him about the case.

22 Q Nothing about this case?

23 A I haven't talked to Mr. Sheridan about the case.

24 Q Since you came in from Nashville did you speak
25 with anybody, any lawyer connected with the government about

1 this case?

2 A I have talked to Mr. Hooker.

3 Q Who else?

4 A Mr. Neal was present.

5 Q And Mr. Neal?

6 A (Witness moves head up and down.)

7 Q And have you spoken to Mr. Lewin?

8 A Who?

9 Q Mr. Lewin?

10 A I don't know him.

11 Q Another government attorney?

12 A I don't know him.

End Tk 9A¹³

Tk 10 fls.

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- 1 Q Mr. Durkin?
- 2 A I don't know him.
- 3 Q You never knew him from the case at Nashville?
- 4 A No, sir.
- 5 Q And when you spoke with Mr. Sheridan in this
- 6 building here, and Mr. Neal was there--
- 7 A (Interposing) No.
- 8 Q Was Mr. Neal present?
- 9 A Not when I was talking with Mr. Sheridan.
- 10 Q Did you speak with him alone?
- 11 A Yes, I did.
- 12 Q At any time did you speak with Mr. Sheridan when
- 13 Mr. Lewin was present?
- 14 A I don't know Mr. Lewin. I do not know him.
- 15 Q Was anybody introduced to you as Mr. Lewin?
- 16 A Not if I can remember.
- 17 Q Well, suppose I pointed out my colleague, Mr.
- 18 Lewin, who sits here in this chair behind the government
- 19 table, and I tell you this is Mr. Lewin in the government
- 20 counsel, by looking at him could you tell him whether you
- 21 had any conversation with him about this case or whether he
- 22 was present when you conferred with any of the government
- 23 counsel about this case?
- 24 A Yes, he has been present one time.
- 25 Q Now, did he take any notes while you were being

1 interrogated?

2 A I don't know that. He did not interrogate me,
3 no.

4 Q I didn't say he did. By anybody?

5 A But I have seen him in the room. But as to
6 whether he was taking notes, I do not know.

7 Q And the conversation you had related to your
8 testimony here in this very court, did it not?

9 A Yes.

10 Q And were you given anything to read?

11 A No.

12 Q Before becoming a witness?

13 A No.

14 Q Were you given any FBI statements or copies of
15 them which had been made of interviews of you in the past
16 for you to refresh your memory?

17 A No. We went over it but as far as papers being
18 given to me, no papers.

19 Q Oh, you went over the testimony?

20 A Went over my statement.

21 Q How many times have you gone over the testimony
22 in preparation for your appearance here as a witness?

23 A About five minutes. I had a conference with
24 Mr. Hooker.

25 Q Now, before you got here to testify in this case,

1 did you have any documents in your possession relating to
2 this case concerning any aspect of your testimony here that
3 you have testified yesterday and today?

4 A No.

5 Q Then, you are testifying completely from memory
6 and all your testimony yesterday, and all your testimony
7 today, is completely from memory.

8 A That is correct.

9 Q And nothing else?

10 A That is correct.

11 Q And that is how good you would say your memory
12 is on details. Is that right?

13 A Good or not, that's correct.

14 Q All right, sir. Now, I ask you once again, on
15 your first conference with Mr. Sheets, some months after
16 these alleged occurrences that you have related, you didn't
17 look at any notes when you gave your first answers to Mr.
18 Sheets, did you?

19 A No.

20 Q You recited right from memory?

21 A Yes.

22 Q Anything he interrogated you about?

23 A Yes.

24 Q And to the best of your memory at the time you
25 made these responses to his questions when he was making

1 notes.

2 A Yes, sir.

3 Q What you told him was the truth, is that so?

4 A Yes, sir.

5 Q May I ask you, isn't it true between us here as
6 men, as a police officer, you would not tell an untruth to
7 an FBI agent? Would I be stating that correctly?

8 A Yes, sir.

9 Q And you know that you can rely upon your memory.
10 Is that right?

11 A To the best of my ability, yes.

12 Q As far as you are concerned everything you have
13 testified here to yesterday and today is the truth?

14 A As far as my memory serves me, yes.

15 Q When you say so far as your memory, consciously,
16 as you think about what you've been inquired of, you know
17 you are telling the truth in your responses here?

18 A That's right.

19 Q And that whatever you told the FBI agents like-
20 wise was the truth. Is that correct?

21 A If you have reference to my seeing Mr. Parks, or
22 knowing him two years--

23 Q (Interposing) I'm saying this, I'm forgetting
24 about Mr. Parks for the moment. I'm talking about this
25 case generally. My one question to you now is that just the

1 same as you can sit here with almost an infallible memory
2 of past events going into the year 1962, just as you sit
3 here and testify under oath, that when Mr. Sheets came to
4 you the first time and you made any statements to Mr. Sheets,
5 whatever you told Mr. Sheets, likewise is the God's truth
6 and nothing else?

7 A That's correct.

8 Q All right. Did you ever testify before a Grand
9 Jury in this case?

10 A Yes.

11 Q Would you tell us when that was?

12 A I don't remember the date.

13 Q Sir?

14 A I don't recall the date.

15 Q Was it in 1963 or 1964?

16 A 1963.

17 Q In 1963 would you fix the approximate time of
18 the year?

19 A Fall of the year.

20 Q Pardon me? The Fall?

21 A Approximately the Fall of the year.

22 Q September or October?

23 A Somewhere around that. I don't recall.

24 Q Now, did you report to your superiors in
25 Nashville in the Police Department there, any conferences

1 that you had had with the FBI, Mr. Neal, or Mr. Shaffer, or
2 Mr. Sheridan, or Mr. Lewin, or Mr. Durkin, or Carl Fields,
3 or Mattie Leath?

4 A No.

5 Q Did you make any written reports if not oral
6 reports to any official of the Police Department at Nashville,
7 concerning your discussions with any of these people whom
8 I have just related?

9 A No.

10 MR. HOOKER: If Your Honor please, I submit all
11 this is repetitious. He asked him about that before and
12 he said he did not report it. Reported to the government.

13 THE COURT: Yes, sir, sustain that objection.

10A

14 BY MR. SCHIFFER:

15 Q Have any charges been filed against you in the
16 Nashville Police Department concerning your part growing out
17 of the matters to which you have testified here today?

18 A No.

19 Q Did any of your superiors discuss this case or
20 any aspect of it with you?

21 A No.

22 Q Did you at any time talk with any official in
23 Washington either in person or on the telephone concerning
24 matters of which you have testified yesterday and today in
25 this case?

1 A I beg your pardon?

2 Q I will repeat the question. Have you at any
3 time talked with any official by telephone in Washington or
4 any city outside of the State of Tennessee, concerning the
5 matters to which you have testified to yesterday and today?

6 A No.

7 Q How long have you lived where you now live?

8 A The exact residence or the city?

9 Q Residence.

10 A Oh, about two years or longer.

11 Q Is this the residence which is near Gratin
12 Fields' home, the juror?

13 A That's correct.

14 Q How long has Gratin Fields lived there?

15 A I wouldn't know.

16 Q You have no idea of that?

17 A Quite a few years.

18 Q How many times have you been in Gratin Fields'
19 home?

20 A I've never been in his home.

21 Q Has he ever been to your home?

22 A No.

23 Q Did you know Gratin Fields on April 1, 1963?

24 A No.

25 Q I will help you identify that date, that is the

1 A I beg your pardon?

2 Q I will repeat the question. Have you at any
3 time talked with any official by telephone in Washington or
4 any city outside of the State of Tennessee, concerning the
5 matters to which you have testified to yesterday and today?

6 A No.

7 Q How long have you lived where you now live?

8 A The exact residence or the city?

9 Q Residence.

10 A Oh, about two years or longer.

11 Q Is this the residence which is near Gratin
12 Fields' home, the juror?

13 A That's correct.

14 Q How long has Gratin Fields lived there?

15 A I wouldn't know.

16 Q You have no idea of that?

17 A Quite a few years.

18 Q How many times have you been in Gratin Fields'
19 home?

20 A I've never been in his home.

21 Q Has he ever been to your home?

22 A No.

23 Q Did you know Gratin Fields on April 1, 1963?

24 A No.

25 Q I will help you identify that date, that is the

1 date when you spoke with Mr. Sheets of the FBI?

2 A No.

3 Q And did you know him, Gratin Fields, on September
4 3, 1963?

5 A No.

6 Q How long have you known him?

7 A I don't know him now.

8 Q Pardon me?

9 A I don't know him now.

10 Q You don't know him now?

11 A No.

12 Q Well, now, I'm going to ask you to call upon
13 your infallible memory and I'm going to ask you did I not
14 ask you a question today, or were you not asked the question
15 by Mr. Hooker, concerning the subject whether you knew
16 Gratin Fields.

17 A Carl Fields.

18 Q I'm talking about Gratin Fields, the juror.

19 A May I explain that, Your Honor?

20 Q Gratin Fields, the juror.

21 A May I explain this?

22 THE COURT: Well, do you or did you know Gratin
23 Fields?

24 A I know him by just seeing him. I mean I know
25 him through his son, his son and I are friends.

1 THE COURT: I see. All right.

2 BY MR. SCHIFFER:

3 Q Were you asked that question here?

4 THE COURT: Re-state your question and just answer.

5 BY MR. SCHIFFER:

6 Q Were you asked the question yesterday or today
7 by either Mr. Hooker or myself, did you know a man by the
8 name of Gratin Fields or who was on the jury in the case at
9 Nashville against Mr. Hoffa?

10 A Yes, I was asked by Mr. Hooker.

11 Q You were asked that, do you remember what your
12 answer was?

13 A Yes.

14 Q Yes, I know Mr. Fields?

15 A That's right.

16 Q You were asked, does he live somewhere in your
17 neighborhood?

18 A Yes.

19 Q Do you remember that question?

20 A Yes.

21 Q And you said, yes, sir, about three doors from
22 me?

23 A That's correct.

24 Q Do you remember that?

25 A That's correct. Your Honor, may I explain?

1 THE COURT: Yes, you may make any explanation.

2 BY MR. SCHIFFER:

3 Q Pardon me?

4 A I know Mr. Gratin Fields through his son and
5 seeing him. I do not know him as a person friend or anything
6 like that.

7 Q Well, did there ever come a time, sir, when in
8 direct response to an inquiry concerning whether you knew
9 Gratin Fields in any fashion?

10 A No.

11 Q From seeing him on the street or knowing him as
12 a friend, did anybody in the Federal Government ever ask you
13 that specific question and did you say in response to that
14 question, that you don't know Fields, Gratin Fields?

15 A No, because I told Mr--

16 Q (Interposing) I'm just asking you did you make
17 that response to a question?

18 THE COURT: Let's let him complete his answer,
19 Mr. Schiffer. He started to answer please and let him
20 complete it.

21 MR. SCHIFFER: Yes, sir.

22 A Mr. Hooker asked me yesterday if I knew Mr.
23 Fields. I told him, yes, but the explanation was not carried
24 through. I still don't know Mr. Fields, I know Mr. Fields
25 through Carl Fields and his daughter, Mattie, but as far as

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1 knowing him or through conversation with him I doubt seriously
2 if I have ever talked to him.
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1 Q Well, when I use the term "know" I am trying to
2 use it in the sense in which you employ it. Whether or not
3 you knew him to talk to him or by observation, knowing that
4 this gentleman, Gratin Fields, walked down the street and you
5 saw him, you would know that is Gratin Fields?

6 A Yes, I would know him if I saw him, yes.

7 Q For how long had you known him that way that that
8 was Gratin Fields if you saw him walking down the street?

9 A Oh, I wouldn't know. Having been to school with
10 his son and his daughter, it may have been some time just to
11 recognize him.

12 Q Would you approximate the number of years, if you
13 can?

14 A Let's see, that would be hard to do because it
15 has been some time since I was in school, too, and if you
16 want me to narrow it down, say about ten or twelve, maybe
17 something like that, years, yes.

18 Q About ten or twelve years?

19 A I have known Carl and Mattie, yes.

20 Q So that may I say to you, we will throw ourselves
21 back now in time to the beginning of 1963, if I were to say
22 to you that as of that time do you know Gratin Fields, and
23 you would know about whom I was speaking, would you not?

24 A Yes, through --

25 Q (Interposing) All right.

1 A Through his son and daughter.

2 Q I'm not saying through whom. I am saying to you
3 if I said to you back in the beginning of 1963, a year ago,
4 "Do you know Gratin Fields?"

5 Your answer would be, "Yes"?

6 THE WITNESS: Your Honor, I am not -- it would
7 have to be through his son and daughter because I didn't
8 know him directly then.

9 BY MR. SCHIFFER:

10 Q Look, it's a very simple question, very simple
11 answer. You said that you could recognize him at least for
12 ten or twelve years if you saw him on the street.

13 A May I explain that further? During the time we
14 were in high school or junior high school I possibly could,
15 then a time elapsed until I moved where I am living now, and
16 it's quite possible to forget faces, especially over the years
17 if they have changed, so that is why I am giving you an
18 indirect answer. I couldn't say that I would possibly have
19 known him during the lapse of time there as to say in years,
20 "That is Mr. Fields," because I couldn't, but after I moved
21 to where I am and seeing him in the neighborhood I could,
22 yes.

23 Q When did you move into that neighborhood?

24 A About two years.

25 Q The street where Mr. Gratin Fields lives?

1 A About two years ago.

2 Q Could you give us the date, please?

3 A The exact date? Well, about two years, give it
4 that way.

5 Q In January of '61 or '62?

6 A I would say '60, just before Christmas or some-
7 thing like that.

8 Q Would that be two years ago?

9 A Well, actually, let's see, to give you the exact
10 date, it was just before Christmas, this is '64 -- it would
11 have to be '61, just before Christmas of '61, something like
12 that.

13 Q Before Christmas of '61?

14 A Yes.

15 Q So that as of Christmas of '61, if you saw Mr.
16 Gratin Fields walking down the street in front of your home,
17 you would know that was Gratin Fields?

18 A Yes.

19 Q Isn't that correct?

20 A After '61, yes.

21 Q And I ask you on April 1st, fixing that as an
22 approximate date to fix a time in 1963, isn't it a fact that
23 you did know who Gratin Fields was?

24 A If the name was called, yes, I would know him.

25 Q If you saw him on the street at this time you

1 would recognize him as Gratin Fields, the individual?

2 A Yes.

3 Q Now, at that time did you, in direct response to
4 an inquiry from anyone connected with the federal government,
5 ask you whether you knew Gratin Fields, did you at that time
6 say you did not know Gratin Fields?

7 A I might have.

8 Q You might have?

9 A But --

10 Q (Interposing) You might have?

11 A In the sense of his knowing me, too. I might
12 see you and say that I know you, but --

13 Q (Interposing) Let me ask you --

14 THE COURT: (Interposing) Let him explain.

15 MR. SCHIFFER: Yes, your Honor.

16 A I might see you and say that I know you, but that
17 wouldn't mean that I would know you well enough to talk to
18 you or even know all your name.

19 Q Yes.

20 A Mr. Fields lives in the neighborhood and it's
21 kind of hard not to know a person when you see him occasional-
22 ly and in your immediate neighborhood and not know who they
23 are.

24 Q May I ask you this, sir: In response to my
25 questions I feel are deliberate and you take your time on

1 giving an answer and you reflect before you give an answer.

2 Has that been habitual with you or you just don't give a
3 fast answer, you think about the questions before you answer
4 it?

5 A I think we all should.

6 Q You try to be entirely sure?

7 A Try to.

8 Q And would you say that as of the time when you
9 made statements to members of the FBI, or attorneys for the
10 government, you have been equally deliberate before you made
11 answer to make sure that you were telling them the truth?

12 A I would try to.

13 Q That was your intention at the time, you would
14 speak with a member of the FBI or anybody connected with the
15 government?

16 A Yes.

17 Q And specifically in connection with this case
18 you never told a falsehood to anybody connected with the
19 government concerning the facts of this case, is that
20 correct?

21 A Not intentionally.

22 Q Not intentionally. But you did not give fast
23 answers, you were deliberate before you made your answers to
24 the questions they were putting to you?

25 A I don't know whether at that time I was or not,

1 but we tried to be, give truthful answers.

2 Q Yes, indeed, and --

3 A (Interposing) And any false answers were not
4 intentional at no time.

5 Q Yes, sir.

6 THE COURT: Do you plan much further cross
7 examination?

8 MR. SCHIFFER: Might we have a short recess,
9 your Honor?

10 THE COURT: All right. Well, let's take a 10-
11 minute recess at this time.

11 End
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12 (Thereupon, a 10-minute recess was had.)

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1 (Thereupon, pursuant to recess, Court was in
2 session.)

3 MR. NEAL: May it please the Court, I have,
4 pursuant to the Court's directions, checked with the FBI
5 agents who interviewed --

6 THE COURT: Let's have an opportunity for all
7 counsel to be present. All right, Mr. Neal.

8 MR. NEAL: I checked with the FBI agent or agents
9 who interviewed Mr. Walker, the procedure I outlined is the
10 procedure they followed. This is done, as I understand it,
11 by directive from Washington that these notes, there is no
12 reason to keep the notes. That they are directed to check
13 the notes with the statements they dictate. And if they
14 find the statement they have dictated to be accurate, then
15 they no longer keep the notes and that is the case in this
16 instance. They are no original notes of interviews with Mr.
17 Walker. I have checked with Mr. Sheridan, and he says that
18 he probably was doodling while he was talking with Mr.
19 Walker and Mr. Walker might assume, validly assume that he was
20 taking notes, but he has no notes of the interview. Those
21 people are here and are available to so state, your Honor, if
22 the Court wishes.

23 THE COURT: All right.

24 MR. SCHIFFER: Your Honor, may I at this time
25 simply address the Court on what Mr. Neal's statement has been.

1 The basis of Mr. Neal's statement, they have either destroyed
2 those notes with good intentions or bad intentions, it doesn't
3 make any particle of difference, your Honor, and we move that
4 the entire testimony of this witness be stricken because we
5 are denied in our own cross examination the vital elements
6 which we need in the attack upon the credibility of this
7 witness. Particularly in view and I reserve this particular
8 motion at the conclusion of this witness' testimony on cross
9 examination to be exhibited, your Honor, to this Court's
10 satisfaction as a matter of law insofar as this man's
11 credibility is concerned and my attack upon it is based upon
12 official government documents of the FBI agents and that by
13 reason of the fact that the inconsistencies will be brought
14 out on the official record, we want and feel that we have a
15 right to see the original notes and any supplementary notes
16 up to the point of making of those documents under the Jencks
17 rule which Mr. Neal has turned over to us and unless the
18 government is prepared to give us that sort of material, your
19 Honor, we feel that all the testimony of this witness should
20 be excluded.

21 THE COURT: Was there any Jencks Act statements
22 given on this witness?

23 MR. NEAL: Every one of them, your Honor, Sunday
24 evening.

25 MR. SCHIFFER: When Mr. Neal says every one of

1 them, I believe there were two?

2 MR. NEAL: Two documents that is all the statements
3 that we have. All the Jencks statements that we have. If
4 Mr. Schiffer cares to go into it with the FBI.

5 MR. SILETS: Your Honor, may I be heard just for
6 a moment before the Court makes a decision on this? Under
7 Section 3500, Title 18, it is stated specifically, the Court
8 shall strike from the record the testimony of the witness and
9 the trial shall proceed unless the Court in its discretion
10 shall determine that the interests of justice require that a
11 mistrial be declared.

12 Now, under the authorities of Campbell versus
13 United States, 365 U. S. 85, the trial judge has an affirmative
14 duty to inquire into the circumstances of the destruction.

15 Now, under a recent decision of the Ninth Circuit
16 decided at the very end of last year, Ogden versus United
17 States, 323 Fed. 2nd 818 --

18 THE COURT: (Interposing) What is that citation?

19 MR. SILETS: 323 Fed. 2nd, 818, at page 820 to

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1 The Ninth Circuit made an analysis of the
2 sanctions that the Court could invoke against the government
3 for not producing documents and the effect of their destruc-
4 tion of certain notes. I think all of the authorities,
5 however, place an obligation, including the Supreme Court
6 in the Campbell case, upon the trial judge to ascertain the
7 circumstances of the destruction.

8 Now, one of the questions that the trial judge
9 must determine is were those notes destroyed before the
10 prosecution was even contemplated?

11 Now, if that is the case there the Court may
12 then conclude that the destruction was in good faith, however,
13 if the destruction was done after the government had con-
14 templated prosecution, then the Court must inquire further
15 to ascertain whether it was in good faith or bad faith and
16 the mere fact that they were following any dictates by the
17 Attorney General or Mr. Neal or Mr. Hooker or J. Edgar
18 Hoover is not of significance. It's an obligation upon the
19 trial court, in the first instance, and affirmative duty
20 by the trial court, to ascertain those circumstances.

21 Now, the declarations by Mr. Neal may be suffi-
22 cient for a destruction of notes that Mr. Neal may have made,
23 but I think it's an obligation of the Court to ascertain
24 from the individuals involved the circumstances and most
25 importantly to ascertain what the basis of it was. Was it

1 good faith or was it with the purpose of refusing ultimate
2 distribution to the defense? Because if they knew at the
3 time that they destroyed them that there was going to be a
4 prosecution this has a tremendous effect upon their intent
5 and if the government, in light of that refuses to turn over
6 those notes, or the Court finds that the notes were destroyed
7 in bad faith or destroyed in contemplation of trial, then
8 under Section 3500, Title 18, the Court may do as the Congress
9 has directed, strike from the record the testimony or, if
10 it is in the interest of justice, declare a mistrial, and I
11 so move in that alternative.

12 THE COURT: All right. The Court will reserve
13 any action at this time on the motion.

14 MR. SCHIFFER: That will be on behalf of all
15 defendants.

16 THE COURT: Beg your pardon?

17 MR. SCHIFFER: That will be on behalf of all
18 defendants.

19 THE COURT: Yes, that will be on behalf of all
20 defendants. Are we ready to proceed with the cross-examination
21 of Mr. Walker?

22 MR. SCHIFFER: Yes.

23 THE COURT: If so, have the jury return.

24 (Thereupon, the jury of 12 and 4 alternates were
25 brought into open court and the following proceedings were

1 had, to-wit:)

2 THE COURT: All right, Mr. Schiffer.

3 MR. SCHIFFER: May I proceed, your Honor?

4 THE COURT: Yes, sir.

5 BY MR. SCHIFFER:

6 Q Mr. Walker, do you know a chief deputy United
7 States marshal in Nashville, Tennessee, by the name of W. W.
8 Beatty?

9 A W. W. Beatty?

10 Q Yes.

11 A No, I do not.

12 Q Do you recall whether he was present when you
13 made any statement to Mr. Sheets?

14 A I do not.

15 Q Do you know the gentleman?

16 A No.

17 Q At any time when you made a statement to Mr.
18 Sheets, which was recorded within your presence, was there
19 another gentleman present?

20 A With Mr. Sheets, the statement I made with Mr.
21 Sheets?

22 Q Yes.

23 A Yes, there was.

24 Q There was one but you don't know his name?

25 A No.

1 Q Did you ask him to be a witness to any of your
2 statements, this other gentleman with Mr. Sheets?

3 A Beg your pardon?

4 Q Did you ask this other gentleman who was with
5 Mr. Sheets when Mr. Sheets interrogated you, did you ask
6 that other gentleman, whose name you do not know, to be a
7 witness to your statement?

8 A Did I ask him?

9 Q Yes.

10 A No, Mr. Sheets asked him.

11 Q Mr. Sheets asked him in your presence?

12 A That's right.

13 Q I see. But the name W. W. Beatty, Chief Deputy
14 U. S. Marshal, Nashville, Tennessee, that has no significance
15 as a name or a person to you?

16 A No.

17 Q I see. Now, yesterday your testimony on direct,
18 answering Mr. Hooker's questions, you stated, did you not,
19 that Parks had called you and you arranged for Parks to come
20 to your house, do you recall that testimony?

21 A Parks called me and I asked him to come to my
22 house, yes.

23 Q Yes. And you stated yesterday that when he
24 arrived you had a conference with Parks in his car?

25 A Yes.

1 Q Incidentally, with reference to his automobile,
2 the time that you have known Mr. Parks you knew, did you not,
3 long prior to this first call from Mr. Parks to you that he
4 had the automobile of a type which you identified by picture
5 yesterday for the government?

6 A Yes.

7 Q Isn't that correct?

8 A Yes.

9 Q So that you are not identifying this automobile
10 as the car which Parks came to see you in at your house as
11 having seen that car for the first time on that day, but you
12 knew he had that car for a time previous?

13 A I knew he had that car previous to that.

14 Q Yes. Now, did you state to Mr. Parks when he
15 asked you about Mr. Gratin Fields that you were a law
16 enforcement officer, you didn't want any part of anything
17 like that?

18 A That's correct.

19 Q In substance?

20 A That's true.

21 Q And that is true, is it not?

22 A That is true.

23 Q And you have never told anybody different, have
24 you?

25 A I beg your pardon?

1 Q You never told anybody differently on that
2 statement?

3 A I am not following you.

4 Q Did you at any time ever in the past, and I refer
5 you to the year 1963, did you ever tell anyone that that con-
6 versation which you just related never took place?

7 A No, I did not tell them.

8 Q You did not. You never told that to the FBI or
9 any attorney for the government either?

10 A No, I told them it did take place.

11 Q Yes, sir. And you stated yesterday that the
12 next contact that you had with Parks was at your office when
13 he informed you that he was opening a dry cleaning business
14 and needed some help and also wanted to have some printing
15 done, is that correct?

16 A No.

17 Q In substance?

18 A No.

19 Q You did not so testify yesterday?

20 A That what now?

21 Q I will repeat the question.

22 A Please.

23 Q You stated yesterday, did you not, in response
24 to questions from Mr. Hooker, in substance that the next
25 contact you had with Mr. Parks was at your office where he

1 informed you that he was opening a dry cleaning business and
2 needed to have some help and he also wanted to have some
3 printing done?

4 A That is correct.

5 Q That is correct?

6 A That is correct.

7 Q Did Parks ask you to do some printing for him?

8 A He did.

9 Q And did you at that time have a conversation with
10 him about the fact that he needed some help and you would
11 try to provide some for him?

12 A That is correct.

13 Q And in that very first conversation when he
14 brought up the fact that he might need some help in this
15 new establishment, as of that moment, you didn't know who
16 you would recommend as a possible employee for Mr. Parks,
17 did you?

18 A No.

19 Q And wasn't the substance of your testimony on
20 this point yesterday that after Parks had made known to you
21 that he needed some help that you first went out and through
22 Mrs. Walker, I think, if that is her name, whose son needed
23 a job, you were doing some work helping people in the area,
24 that you knew her son needed a job and you found out that
25 Carl could use a job, too, Carl Fields?

1 A I had found--

2 Q (Interposing) And it was only afterwards that
3 you selected Carl Fields and the Walker boy for possible
4 employment?

5 A I did not select the Fields boy and the informa-
6 tion was gained prior to his coming to my office to have the
7 handbills printed.

8 Q You knew that he was looking for a better job
9 then before Mr. Parks came to you for the handbills?

10 A That is correct.

11 Q Is that correct?

12 A That's correct.

13 Q And you had already discussed the fact--was it
14 Mrs. Walker, a lady in your area?

15 A No, Mrs. Jackson, Mrs. Walker is my wife.

16 Q And Mrs. Jackson and you had been doing some
17 good work in the area, if anybody needed work and needed
18 help you would lend your services?

19 A To her son and the Fields boy, yes.

20 Q Or anybody else who needed a job?

21 A They lived next door to each other.

22 Q So when Mr. Parks and you had the conversation
23 about maybe he needed some help in his place, why, you
24 already knew yourself that among the people who were looking
25 for work or better jobs one was Mrs. Jackson's son and

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1 another one was Carl Fields?

2 A That is right.

3 Q But at the time when you had this first con-
4 versation with Mr. Parks you didn't mention the name Carl
5 Fields or the Jackson boy's name?

6 A No, either one.

7 Q Isn't that correct?

8 A That is correct.

End Tk 13 9
Tk 14 fls.

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- 1 Q Now, it is your testimony, is it not, and I
2 ask you again to kindly draw your memory back to yesterday,
3 back to yesterday, that the only information Parks indicated
4 to you that he would want from Carl Fields was to tell him
5 the color of the necktie and what clothes Gratin Fields,
6 the juror, was going to wear in court the next day?
- 7 A That's correct.
- 8 Q That is all?
- 9 A That is all.
- 10 Q And was it your testimony that Carl Fields told
11 you that he refused to tell you what color tie or what clothes
12 his father would wear. Is that correct?
- 13 A That is correct.
- 14 Q After that when Carl Fields had told you that he
15 would not tell you nor would he go to his father as I
16 recollect to your testimony and inquire about the clothing
17 his father would wear, that was the last contact you had
18 with Carl Fields?
- 19 A That's correct.
- 20 Q Then yesterday you testified that you and Parks
21 went to visit Mattie Leath, Carl Fields' sister?
- 22 A That's correct.
- 23 Q I believe it was a community center, was it not?
- 24 A Yes.
- 25 Q And you related that Parks picked you up and

1 took you out there in his car?

2 A That's correct.

3 Q Now, that car, is that the same Buick type which
4 you identified before?

5 A That's correct.

6 Q In this case?

7 A That's correct.

8 Q Now, let me ask you this, at any time in 1963,
9 did you deny to anybody that Parks was with you on any trip
10 at any time to Mattie Leath's place of employment and that
11 he had driven you over there and taken you home?

12 A I might have.

13 Q You might have?

14 A Yes.

15 Q Could that have been to a private lawyer or a
16 private citizen or to a member of the Federal Government?

17 A It could have been to a private citizen. I don't
18 recall talking to a lawyer and my statement carries the
19 fact that I did go out there with him so it couldn't have been
20 to a representative of the government.

21 Q It would definitely not have been to a representative
22 of the government?

23 A No, because my statement--

24 Q (Interposing) It would have been to a private
25 citizen?

1 A No, my statement verifies the fact that I went
2 out there with him.

3 Q I'm sorry, you lowered your voice.

4 A My statement verifies that I did go out there
5 with Mr. Parks.

6 Q You never denied that to a private citizen, but
7 definitely not to a representative of the government,
8 Federal Government in any case?

9 A I didn't say that. I don't recall that at all.

10 Q You don't recall that at all?

11 A No, sir.

12 Q Did you state at any time in the year 1963 to
13 anyone that you had called Mattie Leath at the Napier, J. C.
14 Napier Community Center?

15 A I did.

16 Q And you had arranged to meet her?

17 A At lunch.

18 Q You stated that?

19 A Yes.

20 Q Did you ever deny that to anyone?

21 A No. Not as I remember.

22 Q What is your best recollection?

23 A I don't remember denying it to anyone.

24 Q And you did meet Mattie Leath?

25 A Yes, I did.

1 Q Did you have any conversation with her about
2 what clothes or tie her father would wear to court?

3 A No. Our conversation was that her brother
4 discussed the matter with her.

5 Q I ask you, sir, did you ask her to tell you what
6 clothing and tie her father would wear to court?

7 A I believe that was discussed by her to me after
8 I asked her.

9 Q By her to you?

10 A I beg your pardon?

11 Q You say, by her to you?

12 A Yes, after I asked her, her brother had mentioned
13 the conversation, and she says, "I don't want to fool with
14 it no kind of way. My father would do nothing like that", or
15 something.

16 Q So you never discussed that point with her?

17 A I beg your pardon?

18 Q You yourself never discussed that point with her
19 and tried to get from her the information as to what her
20 father would wear?

21 A No, no, because she said what she said, and I
22 told her what to do and that was the end of the conversation.

23 Q And when you told her what to do, if I recollect
24 your testimony correctly yesterday, you told her if anybody
25 came down to you and Mattie, and indicated to you that they

1 want to talk with you about Gratin Fields, your father, and
2 about this case going on there in Nashville, why, you report
3 it to the police?

4 A I told her that I would have been surprised at
5 her if she had and anything of that particular type. And
6 that if she were contacted, to contact the FBI or police.

7 Q And you did that because you are a police officer
8 yourself, you advised her that we must all obey the law?

9 A I did that knowing her.

10 Q Knowing her?

11 A Yes, I did.

12 Q And the advice you gave her you gave her in good
13 faith?

14 A That's correct.

15 Q And you intended by that statement to her to
16 indicate to her that it would be a violation of the law for
17 someone to make an attempt to speak with her father, is that
18 what you meant to convey to her?

19 A If she talked to her father direct, yes.

20 Q If they talked to her about her father?

21 A No, I didn't say that if they talked to her about
22 her father.

23 Q If they talked to her father direct then she
24 should do that?

25 A Yes, sir.

1 Q You didn't testify that on yesterday, did you,
2 sir?

3 A Indirectly.

4 Q Indirectly?

5 A Yes, sir.

6 Q Do you remember your testimony yesterday on this
7 point?

8 A Oh, yes. Yes, I do.

9 Q Did you yesterday testify that you told Mattie
10 Leath this that if anybody attempted to contact her that
11 she should call the FBI?

12 A I testified to that effect, yes, but no answer
13 or reason was given yesterday.

14 Q Did you ever testify in a similar way anywhere
15 else on that subject?

16 A That's right. Same way.

17 Q Did you testify before the Grand Jury?

18 A That's right.

19 Q Do you know Allen High, a lawyer in Nashville,
20 Tennessee?

21 A Yes, sir, I do.

22 Q I beg your pardon?

23 A Yes.

24 Q He had a conference with you, did he not?

25 A Yes.

1 Q Did you not state to Allen High when he interviewed
2 you on September 3, 1963, didn't you state to him that when
3 you had visited Mattie Leath at her place of employment you
4 did not discuss the Hoffa case and that you denied discussing
5 the Hoffa case when interviewed by the FBI?

6 A Mr. High came out to talk to me and he asked me
7 in reference to what I had talked to the Federal Government
8 about.

9 Q Well, did you feel offended that he had come to
10 you to ask you these questions?

11 A I got busy and would not talk to either of them.
12 They sit there for awhile and we did not discuss it.

13 Q You said you had no discussion at all with Mr.
14 High?

15 A No, I didn't say that. He came out to my place
16 to discuss it.

17 Q But were you offended that he had come to you to
18 discuss the case?

19 A I don't know how you mean offended.

20 Q Well, did you feel that you shouldn't talk with
21 him?

22 A My place is open to anybody and I did not talk
23 to him so I guess I did.

24 Q You guess you did?

25 A I guess I did.

1 Q Now, when you guess you did, will you please
2 refresh your memory and see if you can answer this question,
3 when Mr. High came to your place of business on September 3,
4 1963, did you not state to him that when you had visited
5 Mattie Leath and her place of employment you did not discuss
6 the Hoffa case with her?

7 A I did not discuss that with Mr. High.

8 Q Now, I say the Hoffa case, I trust you know what
9 I mean?

10 A Yes, I do.

11 Q Gratin Fields as a juror's connection with the
12 case about the clothing he would wear or anything else
13 connected with his activity as a juror?

14 A That's right. I did not discuss that with Mr.
15 High when Mr. High came to my place.

16 Q It wasn't what you discussed with Mr. High. I
17 am asking you did you not tell him that when you had gone
18 to Miss Mattie Leath's place of employment you had had no
19 discussion about the Hoffa case and that you had denied to
20 him that you had discussed the Hoffa case when interviewed
21 by the FBI.

22 A Repeat that please.

23 Q You denied two things to Mr. High. One, that you
24 had even spoken with Mattie Leath about the Hoffa case when
25 you went over to visit her at the Napier Community house.

1 A I could not have denied that. Mr. Parks was with
2 Mr. High when he came to my place. We did not discuss my
3 trip to Miss Leath's place.

4 Q Well, then you say then that Mr. High would be
5 in error if he said you discussed that?

6 A Yes, I would.

7 Q Is that correct?

8 A Yes.

9 Q And he would be in error also if you denied now
10 that you said to him that you had not discussed the Hoffa
11 case when you were interviewed by the FBI?

12 A I am also denying that.

13 Q You would?

14 A That's right.

15 Q At that time didn't you state that your only
16 reason for visiting her, Mattie Leath, was to stop in and
17 see her for a friendly visit?

18 A Your Honor, he is asking me the same question
19 over. I have given him the answer that I did not discuss
20 the case at all with Mr. High when he came out.

End
Tk 14

Tk 15
follows

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1 MR. HOOKER: We think it is repetitious, if your
2 Honor please, in that respect.

3 THE COURT: He said he didn't discuss it at all
4 with Mr. High.

5 MR. SCHIFFER: I will read the question again to
6 him.

7 BY MR. SCHIFFER:

8 Q Did you state at that time to Mr. High that your
9 only reason for visiting Mattie Leath was to stop in and see
10 her for a friendly visit?

11 THE WITNESS: Your Honor, again no conversation
12 discussed in regard to Mr. High at the time he was in my
13 place.

14 BY MR. SCHIFFER:

15 Q At the time the name Mattie Leath was never dis-
16 cussed with Mr. High when Mr. High came to your place?

17 A That's correct, I did not discuss the case with
18 him.

19 Q What did he say to you, what he came to see you
20 about?

21 A He wanted to know if the government agents had
22 talked to me at all.

23 Q Yes.

24 A He wanted to know what they said.

25 Q Yes.

1 A And would I give a statement, and I told him no.

2 Q You said no?

3 A I said no.

4 Q And --

5 A (Interposing) So I took --

6 Q (Interposing) So --

7 MR. HOOKER: (Interposing) Wait a minute, let
8 him answer.

9 Q I am sorry.

10 A I take for granted that he has told you that I
11 didn't want -- that I said, "I won't discuss it," or I hadn't
12 talked to him.

13 Q All I am asking you is then it's true that there
14 was talk about the FBI and any testimony or statement you
15 might have made to them about what was commonly called the
16 Hoffa case?

17 A He wanted me to make a statement in regard to
18 what was discussed with the FBI and I refused him.

19 Q Did you say to him that you didn't make any state-
20 ment to the FBI?

21 A I have told him I had no statement to make to him,
22 he might have confused it.

23 Q And at that time you told him the truth, whatever
24 you did tell him you told him the truth?

25 A If I told him I had no statement to make and I

1 didn't make any, it would be true.

2 Q All right. How many times have you testified
3 before the Grand Jury?

4 A How many times have I what?

5 Q How many times have you testified before the Grand
6 Jury about this case?

7 A One time.

8 Q When was that?

9 A The exact date I don't remember.

10 Q You are saying in the fall of the year of 1963?

11 A Thereabouts.

12 Q Was that after an indictment in this case had
13 been returned by the Grand Jury?

14 A Yes. After an indictment of what?

15 Q I will have to repeat that. Was that when you
16 testified, was that after the Grand Jury had come out with
17 this indictment in this present case?

18 A Yes, I think so.

19 Q Now, did anybody representing the government,
20 in whatever capacity, government attorneys, Mr. Walter Sheri-
21 dan and his group, chief investigator, or anybody connected
22 with the FBI ever tell you, "You're in trouble"?

23 A No.

24 Q Did anybody say to you, "Mister, for what you
25 have done, you can be indicted"?

1 A No.

2 Q Nobody ever said that?

3 A (Witness moves head from side to side.)

4 Q Did you secure a decoration from the police
5 department in Nashville for your activities in this case?

6 A No.

7 Q And you haven't been fired?

8 A No.

9 Q And you still attend to your regular work on the
10 police department ever since the time when Mr. Parks came to
11 see you in the fall of 1962?

12 A Yes.

13 Q And since you made known all this material to the
14 FBI and made all these statements before the Grand Jury you
15 have never lost a day's work, have you?

16 A No.

17 Q Now, after you talked to Sheets, Mr. Sheets of the
18 FBI, and Mr. Disspayne, the U. S. Marshal, did you ever have
19 a conference with Carl Fields?

20 A No.

21 Q Did you have any talk at all with Carl Fields
22 from the date that you had your conference, and I fix that
23 date as approximately April 1st of 1963?

24 A I haven't talked with Carl Fields since the date
25 that I saw he and Parks together.

1 Q Have you spoken to Mattie Leath?

2 A With the exception of the telephone call that
3 night.

4 Q Did you ever speak with Mattie Leath since?

5 A From the time that I had seen her up until I
6 got here, no.

7 Q Have you seen Mr. Disspayne since?

8 A I saw him yesterday.

9 Q Yesterday. And how many times prior to yesterday
10 have you seen him going back to April 1st?

11 A I have occasion to see him quite often, being in
12 Nashville.

13 Q And the times you would see him quite often there
14 were occasions when you discussed this very case with him,
15 did you not?

16 A No, never have.

17 Q Did you never talk about this case with Mr.
18 Disspayne?

19 A Other than the times that he was out to my place.

20 Q Since that date?

21 A No.

22 Q That was April 1st, 1963, was it not?

23 A No.

24 Q All right, sir. I'd like to repeat one question
25 and I wish you would bear with me. I just want to make sure

1 of what your prior testimony is. It is your testimony, is it
2 not, that the only information Parks sought from Carl Fields,
3 as you understood it, was to tell him the color of the neck-
4 tie and clothes Gratin Fields was going to wear the next day
5 in court?

6 A That's right.

7 Q That is the sum total?

8 A That's right.

9 Q Now, will you advise this Court and jury, please,
10 there came this time when Mr. Sheets and Mr. Disspayne came
11 out to your home the first time and they had a conference with
12 you in their automobile, you recall that?

13 A (Witness moves head up and down.)

14 Q And to their questions you gave them answers?

15 MR. HOOKER: A great deal of this we have gone
16 over.

17 MR. SCHIFFER: I am laying a foundation.

18 MR. HOOKER: Taking an undue length of time here
19 on this cross examination.

20 MR. SCHIFFER: Well, I am sorry if I vex Mr.
21 Hooker. The only thing I must cross examine on is facts.

22 MR. HOOKER: You haven't vexed me, just worn me
23 out.

24 MR. SCHIFFER: Well, if Mr. Hooker wants a recess,
25 Judge, I am willing.

1 THE COURT: State your question.

2 BY MR. SCHIFFER:

3 Q Now, with reference to that time you had the
4 first conference in the automobile and Mr. Disspayne was in
5 the car and Mr. Sheets was in the car and they were asking
6 you questions, at least Mr. Sheets asked you questions, he
7 was writing down notes and you gave answers, is that right?

8 A That's right.

9 Q Now, then, you have testified about a week later
10 it was that you had your second meeting with Mr. Sheets?

11 A Thereabouts.

12 Q At the Federal Building?

13 A Thereabouts.

14 Q About that?

15 A Yes.

16 Q Did he ask you the same questions he had asked
17 you the first time?

18 A Just about, yes.

19 Q About the same questions?

TK 15 End 20
15a fls

A About.

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1 Q And so you made the same answers both times, is
2 that true?

3 A I think that's just about right, that's what I
4 made in my statement. Your Honor, I can't be sure because I
5 don't remember the exact questions.

6 THE COURT: All right.

7 Q I didn't quite hear you.

8 A I say I can't be sure because I don't remember
9 the questions, direct questions in the course of conversation.

10 Q I see. But whatever questions he did put to you
11 you can say here with your own integrity under oath whatever
12 you did tell him in response to his questions was the truth.

13 A That's right.

14 Q All right, sir. Now, then, after you had made
15 statements the first time to Mr. Disspayne and Mr. Sheets in
16 the automobile at your house about a week later, you had
17 another conversation with Mr. Sheets at the Federal Building?

18 A I might say this, Your Honor, the first question
19 was merely something similar to an interview, I did not make
20 the statement at that time, I made the statement after I got
21 to the courthouse.

22 Q I say they were asking you questions in the
23 automobile and Mr. Sheets was making notes.

24 A As far as I know he was making notes, yes.

25 Q Yes. As far as you know he makes accurate notes,

1 A I didn't say that either.

2 MR. NEAL: The witness didn't get his answer out
3 before. The witness said the first time when Mr. Sheets and
4 Mr. Disspayne came out he did not make a statement.

5 A No, sir.

6 Q When you refer to the word "statement", you mean
7 something typewritten or written on paper?

8 A And signed, yes.

9 Q Yes.

10 A Yes.

11 Q And you didn't intend, if you didn't actually
12 take a piece of paper and write on it as a physical piece of
13 paper, that you would tell the truth on that but if the FBI
14 man asked you a question that you would feel free to lie to
15 him, would you?

16 A No.

17 Q You would tell the truth if he asked you a
18 question orally, isn't that right?

19 A There were several questions asked me when he
20 came out to visit me but my statement was not made until I
21 went to Federal Court.

22 Q I am just trying to clarify your use of the
23 word "statement", you see, so we all understand what you mean.
24 So far as you are concerned, whether the statement as you
25 refer to it is something in writing or was an FBI man giving

1 you oral questions and you making oral answers, you still
2 would tell the truth under both circumstances?

3 A My interpretation of a statement is something
4 signed and witnessed.

5 Q Yes. Now, I just want to go that next step.
6 However, so far as you are concerned, it makes no difference
7 whether the FBI man asks you questions orally and you make
8 answers to him or whether you actually take a written
9 statement and sign it, in both instances you intend to tell
10 the whole truth, isn't that right?

11 A That's right.

12 Q All right. Now, then this written statement to
13 which you refer, you presented to Mr. Sheets then approximately
14 a week after the first time he had interviewed you with Mr.
15 Disspayne?

16 A Thereabouts, yes.

17 Q How long did it take you to prepare that written
18 statement which you gave to Mr. Sheets?

19 A I didn't prepare it, it was prepared there as
20 the questions were asked.

21 Q Where was that prepared, did you say?

22 A Questions were asked and it was prepared there
23 in the place there. As to how long it took me, I don't
24 know.

25 Q You mean in the Federal Building in Mr. Sheets'

1 office?

2 A That's right.

3 Q Is where the statement itself was prepared?

4 A That's right.

5 Q The one that you signed?

End 15A 6 A That's right.

Tk 16
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1 Q Now, in between your first session with Mr.
2 Sheets and Mr. Disspayne, and the approximately week later
3 when you came back to the Federal Building with Mr. Sheets
4 and you made a statement which was reduced to writing, type-
5 writing, and which you signed, were you preparing your mind
6 and refreshing your memory about all the past events so when
7 you came to see Mr. Sheets the second time?

8 A Not necessarily.

9 Q Pardon me?

10 A Not necessarily.

11 Q Not necessarily?

12 A No.

13 Q Let me ask you, sir, did you at any time indicate
14 your relationship with Mr. Parks as you have testified in
15 this case to Mr. Sheets the first time he interviewed you in
16 the automobile with Mr. Disspayne sitting in the car?

17 A Yes, I believe so.

18 Q You did, sir?

19 A Yes.

20 Q Did Mr. Sheets inquire of you whether or not you
21 got Carl Fields a job at Mr. Parks' place?

22 A You will have to repeat that. I didn't hear you.

23 Q Did you tell Mr. Sheets that you arranged the
24 meeting between Carl Fields and Mr. Parks, the defendant, to
25 secure a job for Mr. Carl Fields?

1 A Yes, now, my statement was taken by Mr. Sheets.

2 Q Do you remember now of your own independent
3 recollection you said that?

4 A Yes, because the statement was taken from me.

5 Q Do you mean your later statement a week later,
6 I am talking about now of the statements you made to Mr.
7 Sheets.

8 A Both times I talked to Mr. Sheets.

9 Q You say at both times?

10 A Yes, I talked to Mr. Sheets both times.

11 Q Did you state to Mr. Sheets that you had arranged
12 a meeting between Tom Parks, and Carl Fields, and that you
13 did not know as of April 1, 1963, when you made this state-
14 ment, that they were discussing the Hoffa trial in Nashville?

15 A I could not have known that. I was not present
16 at the conversation, sir. I could not have known it.

17 Q I am asking you about the statement which you
18 have made to Mr. Sheets.

19 A I told Mr. Sheets that I was out of the room and
20 when I came back they were preparing to leave.

21 Q You are speaking about your second statement,
22 the written statement?

23 A I don't know whether the first or second state-
24 ment.

25 Q I am referring to your oral questions and answers,

1 the information you gave in that automobile, if you would
2 listen to the question, I am sure we will make some headway
3 here. I am referring to the first conversation you had with
4 Mr. Sheets and with Mr. Disspayne in the automobile.

5 A I don't recall whether the first or second con-
6 versation. Both the conversations were with Mr. Sheets.

7 Q I am talking of the conversation with Mr. Sheets
8 in the automobile behind your house, Mr. Disspayne sitting
9 in the front, the driver's seat, and you and Mr. Sheets
10 sitting in the back of the car, do you remember that incident?

11 A Yes, sir, I remember the conversation, but as to
12 whether it was the first or second conversation, I do not.

13 Q Now, you tell us that to the best of your recol-
14 lection now you don't know whether you first saw Mr. Sheets
15 the first time in the Federal Building or whether the first
16 time was behind your house in their automobile?

17 A No, I did not say that. I say I don't recall
18 whether this was said in the first conversation or the second
19 conversation.

20 Q Let me read something to you and I draw the
21 government's attention to it. The FBI report dated April
22 1, 1963. The first page, second paragraph. And for your
23 information this is signed by Mr. Sheets. This is an FBI
24 report.

25 "Walker admitted arranging a meeting between Tom

16 - 4 *

Walker - Cross

1699

1 Parks and Carl Fields but claimed that he had no information
2 that this meeting concerned the case of James R. Hoffa being
3 tried in Federal Court in Nashville."

4 Do you recall your being inquired of concerning
5 that subject and your giving that answer, making that ad-
6 mission?

7 A I just told you I wasn't present at the time the
8 conversation between Carl and Parks. That is when I couldn't
9 have known nothing.

End Tk 1610
Tk 16A fls.

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1 Q I am asking you, you were interviewed on April 1
2 of 1963 and they were asking you about something which had
3 occurred in its totality in October and November and December
4 1962. Did you as of April 1, succeeding year, tell them the
5 truth when you said you did not know anything that there was
6 any connection between the meeting between Carl Fields and
7 Tom Parks concerning the Hoffa case? In this trial in Nash-
8 ville?

9 MR. NEAL: Your Honor, may the government object,
10 if your Honor please, if he is trying to bring out some prior
11 inconsistent statements he is not laying the foundation for
12 it. He is merely confirming what he just read as the same
13 thing that the witness said on the stand. He was not present
14 at the conversation between Parks and Fields, and he is just
15 harassing the witness with it without laying any foundation
16 for any inconsistencies.

17 MR. SCHIFFER: I have laid the entire foundation
18 for the FBI reports. He said it was taken down in his
19 presence by Mr. Sheets. I'm reading now from the document
20 submitted by the government to me as being an exact replica,
21 it is a photostat of that very report which has been identi-
22 fied by this witness and I'm inquiring now concerning matters
23 which appears on the very face of this very report which this
24 witness is supposed to have admitted to the FBI Agent Sheets
25 who took the statement.

1 THE WITNESS: Your Honor --

2 THE COURT: (Interposing) Well, it does seem to
3 the Court we are being awfully repetitious, gentlemen. Can
4 we not move along a little bit more and ask your questions
5 more to the point and move along once there has been an
6 answer given without repeating such long, verbose questions
7 and without repeating the same question so many times?

8 MR. SCHIFFER: Your Honor, I am going to try to
9 do the best I can since it might be repetitious, but it is
10 on another point, your Honor.

11 THE COURT: All right.

12 BY MR. SCHIFFER:

13 Q Tell me this, in between the first time when you
14 had this meeting with Mr. Sheets and Mr. Disspayne in the
15 automobile, and the time when you came you made what we will
16 call the written statement which you talk of, you had been
17 thinking about the case for a week, approximately a week
18 before you came back to the FBI to make the long statement,
19 isn't that correct?

20 A That is possible it could run across my mind,
21 but as far as concentrating on it, I would say --

22 Q (Interposing) Well, isn't it a fact that you
23 knew that they were recalling you before the FBI and you
24 wanted to prepare in your own mind the sequence of what you
25 thought had happened?

1 A Well, that would be natural.

2 Q That would be natural and you did it, isn't that
3 a fact?

4 A I wouldn't say that.

5 Q Is Parks a personal, dear friend of yours up to
6 this point, October, November, December 1962?

7 A I don't recall ever saying he was a dear friend
8 of mine.

9 Q I am asking you was he a dear, personal friend
10 of yours?

11 A Not a dear, personal friend, no.

12 Q Just acquaintance and mere acquaintance, isn't
13 that correct?

14 A Yes, acquaintance.

15 Q So, you did have the opportunity then between the
16 first meeting with the FBI Agent Sheets in the car and the
17 time when you came back the following week or so, to give
18 them a written statement, you say you did think about the
19 events to which you testified here?

20 A I would say that was quite natural to think about
21 it.

Tk 17 .
H 1

Walker-Cross

1703

- 1 Q I ask you if it actually happened with you?
- 2 A I am pretty sure.
- 3 Q You are sure it did?
- 4 A I am pretty positive.
- 5 Q You were interested in the issue, were you not?
- 6 A Yes.
- 7 Q This was of vital concern to you, was it not?
- 8 A Indirectly, yes.
- 9 Q Say of mild interest then?
- 10 A Yes.
- 11 Q Did you not say to Mr. Sheets in the first
- 12 meeting in the automobile behind your house that your
- 13 meeting with Mattie Leath, you met her over there at the
- 14 Napier Community House Center, occurred after you had read
- 15 in the press how the involvement of Tom Parks in the Hoffa
- 16 case?
- 17 A After what?
- 18 Q Didn't you say to Mr. Sheets that you visited
- 19 Mattie Leath after you had read in the newspaper of the
- 20 involvement of Tom Parks in the Hoffa trial?
- 21 A I don't recall that, I don't remember making
- 22 that statement to Mr. Sheets.
- 23 Q Would you say if that appears in Mr. Sheets'
- 24 report--
- 25 A (Interposing) Mr. Sheets' notes were in shorthand

1 and--

2 Q (Interposing) I say this to you, sir: You know
3 Mr. Sheets, do you not?

4 A Yes.

5 Q Would you say that insofar as whatever may appear
6 in the FBI report as recorded by Mr. Sheets, that whatever
7 he had there would be the truth of what you told him?

8 A I don't know.

9 Q Anything he reports in his report would be the
10 truth as you told him?

11 THE WITNESS: Your Honor, I am not following.

12 THE COURT: We have been over that not less than
13 six times.

14 BY MR. SCHIFFER:

15 Q Did you in that first conference with Mr. Sheets
16 deny that you had discussed with Carl or Mattie the type of
17 clothing to be worn by their father in the courtroom?

18 A I don't recall denying any parts of it to Mr.
19 Sheets, I gave Mr. Sheets my statement, sir, I couldn't have
20 denied anything.

21 Q I see again you refer to the written statement.
22 I am speaking about the first interview with you.

23 A I don't recall.

24 Q May I ask you this, sir, in all candor, isn't it
25 a fact that you lied to Mr. Sheets the first time he sat with

1 you in his automobile behind your house in the presence of
2 Mr. Disspayne?

3 A I will admit there may have been some misunder-
4 standing between the questions that he asked me at that
5 particular time.

6 Q Can you tell now, as you sit here, that you
7 misunderstood what he was asking you?

8 A It's quite possible.

9 Q Very possible?

10 A Yes, very much so.

11 Q Isn't it a fact that you told Mr. Sheets that
12 Mr. Parks was not with you when you went to visit Mattie at
13 the hospital, at the Napier Homes?

14 A I may have, I don't recall.

15 Q Well, then if you did not would it have been the
16 truth that you told Mr. Sheets ?

17 A Beg your pardon?

18 Q Would that have been the truth?

19 A What?

20 Q What you told Mr. Sheets?

21 A My statement as to Mr. Sheets verifies the fact
22 that he did go out there with me.

23 Q Yes. Your statement is a week later after you
24 had an opportunity to think over the answers you had given
25 to Mr. Sheets.

1 THE WITNESS: Your Honor, would you ask him to
2 define to me what he means when he says "statement" or course
3 of conversation?

4 THE COURT: Well, if you don't understand any
5 question don't hesitate to have it repeated.

6 MR. SCHIFFER: Would you bear with me one moment,
7 please, Your Honor.

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1 BY MR. SCHIFFER:

2 Q Now, tell me, Mr. Walker, did you at any time
3 as a police officer undertake to arrest Mr. Parks for any of
4 his activities that he related to you as you have testified?

5 A I did not see any activities that he actually
6 did. No, I did not attempt to.

7 Q And you will say that everything you discussed
8 with Mr. Parks, everything to this very moment, there was
9 nothing that he suggested to you of an illegal nature?

10 A No, I will not say that.

11 Q No? I didn't understand your answer.

12 A I said no, I will not say that.

13 Q You will not say that?

14 A No.

15 Q But then as a police officer you didn't make any
16 complaints to any superior or the FBI or attempt to arrest
17 them yourself, did you?

18 A I could only arrest a man for actual proof, had
19 no proof.

20 Q You had no proof?

21 A No.

22 THE COURT: All right. Ladies and gentlemen,
23 at this time, let's adjourn until 1:30. Be back at --

24 MR. NEAL: (Interposing) Would the Court stay on
25 the bench momentarily?

1 THE COURT: Yes. Ladies and gentlemen of the
2 jury, now do not discuss the case among yourselves or allow
3 anyone to talk with you about it. Be back at 1:30.

4 (Thereupon, the jury of twelve and four alternates
5 were excluded from the courtroom and the following proceedings
6 were had, to-wit:)

7 MR. SILETS: Your Honor, may the witness be
8 instructed not to converse with anyone?

9 THE COURT: Yes. Mr. Walker, do not discuss your
10 testimony with anyone or allow anyone to talk with you about
11 it.

12 (Witness temporarily excused.)

13 THE COURT: All right.

14 MR. NEAL: May it please the Court, the Court
15 reserved decision on the motion for a mistrial and to strike
16 this gentleman's testimony because the FBI did not retain
17 the original notes of some interview.

18 I want to point out to the Court a case which
19 holds that where the procedure is followed, as I have out-
20 lined and as the witness is willing already to testify if
21 defense counsel wish, that there is not need to and no require-
22 ment that the original notes be retained. That case is
23 United States versus Greco, 298 Fed. 2nd, 247, Second Circuit,
24 1962, certiorari denied, 369 U. S. 820, specifically at page
25 250, the Court says, "Nor is there any legislative requirement

1 that all notes shall be preserved after transcriptions have
2 been made and checked for accuracy."

3 Also, your Honor, some language to the same
4 effect in Killian versus United States, 368 U. S. 231.

5 THE COURT: All right.

6 MR. NEAL: Particularly at page 264 and 265.

7 THE COURT: All right.

8 MR. HAGGERTY: There is one matter, your Honor.

9 THE COURT: Yes.

10 MR. HAGGERTY: That's a matter which we sincerely
11 attempted to reach an agreement on in order to expedite the
12 Court and jury's time and that is a matter of furnishing us
13 Jencks statements.

14 Now, I presume before the day is over there will
15 be other witnesses. I had an understanding, or at least I
16 thought I had an understanding with Mr. Neal, that I was to
17 call him between six and seven last evening and get the
18 information if Jencks statements were available. I called Mr.
19 Neal from 6:15 until 10 minutes till 10:00. I called his
20 office, I called his hotel room, and I called Mr. Hooker's
21 room.

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1 And I called Mr. Hooker's room, never with a
2 response. Without response. So today we were furnished
3 with no Jencks statements.

4 Now, if that is repeated what it means is this,
5 your Honor, if it is of Mr. Neal's election to furnish us
6 with these statements, furnish them in court, as he has a
7 right to do, when his witness takes the stand, then we are
8 going to ask for a recess and there is a lot of lawyers here
9 to look over that statement and all I can see the effect is
10 going to be is to delay this trial substantially, probably
11 days, in its gross amount.

12 Therefore, I am appealing to the Court at this
13 and I know that the Court cannot compel Mr. Neal to deliver
14 those statements, but I think a word of caution would be
15 advisable. I spent the entire evening, last evening, as I
16 stated, attempting to get those statements. Now, I don't
17 intend to spend all my evenings that way.

18 THE COURT: Well, certainly it is the hope of
19 the Court that that can be done. Of course, as you indicated
20 it is not a matter upon which the Court can order anyone to
21 do anything until after the witness has testified, but it
22 was the hope of the Court that that might be done.

23 MR. NEAL: And there has been no witness on the
24 stand with respect to those statements, Mr. Haggerty,
25 has not had them at least one night. This interminable

1 cross-examination can lead, if we had given the witnesses'
2 statements last night, it might have been Friday before we
3 got to them. And we are not going to give to them that far
4 in advance.

5 MR. HAGGERTY: Well, we have an understanding.
6 Mr. Neal can keep his statements and furnish them to us when
7 his witness is through with the stand if that is the way he
8 wants it.

9 THE COURT: Well, you gentlemen try to work that
10 out and all of us I am sure are interested in trying to move
11 along. Let's adjourn court until 1:30.

12 (Thereupon, at 12:05 o'clock p.m., court was
13 adjourned for the noon recess until 1:30 o'clock p.m.)

End Tk 18¹⁴
Tk 19 fls.

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AFTERNOON SESSION

1:30 O'Clock P.M.
January 28, 1964

(Thereupon, pursuant to adjournment for the noon recess, court was in session.)

THE COURT: The Court still has under advisement Mr. Branstetter's motion and objection in regard to the jury instructions with reference to declaration or admissions.

MR. NEAL: May the government say something in that regard, your Honor?

THE COURT: Yes, sir.

MR. NEAL: The government--the Court was talking about admissions of a party.

THE COURT: Yes.

MR. NEAL: There is no requirement that an admission of a party be pecuniary interest, there is an exception to the hearsay rule called declarations against interests, the declaration can be made by anyone who is a non-party if it's against a pecuniary interest, admissible on the theory that a man doesn't state something that is against a pecuniary interest unless it be true but an admission of a party is sometimes called admission against interests of party and are entirely different exceptions and that's what your Honor charged on.

THE COURT: Yes. Well, the Court will look into that matter further.

1 Now, then, Mr. Silets, just before you proceed
2 with regard to the Jencks Act, the Court does order and
3 instruct the government now to produce any statements of the
4 witness in the possession of the United States. Has the
5 government done that of the witness, Mr. Walker?

6 MR. NEAL: Your Honor, yes, your Honor, we have
7 produced all in the possession of the United States.

8 THE COURT: With regard to that matter then,
9 after we excuse the jury this afternoon we will proceed to
10 take further proceedings on that and the witness will remain
11 available until after the Court has had an opportunity to
12 consider this matter further. Does that--

13 MR. SILETS: Yes, sir.

14 THE COURT: All right. Yes, Mr. Schiffer.

15 MR. SCHIFFER: Your Honor, without losing time
16 to go to the podium would your Honor permit us at this time
17 to reserve further cross-examination of this witness until
18 a later time when it becomes pertinent? We may want to use
19 him again after other witnesses have testified on this count.

20 THE COURT: All right.

21 MR. HOOKER: I assume you can give reasonable
22 notice.

23 MR. SCHIFFER: We shall.

24 THE COURT: Any reason why we should not proceed?

25 MR. HOOKER: No, sir. We can have him available.

1 He lives in Nashville but if we had some reasonable notice
2 we will have him here.

3 MR. SCHIFFER: Thank you.

4 THE COURT: Is there any further examination of
5 this witness then by any defendant at this time? The Court
6 understands that there is not. Is there any further exami-
7 nation of this witness at this time by the government?

8 MR. HOOKER: Yes, sir, just two or three other
9 questions.

10 THE COURT: All right. May we have him returned,
11 please, to the witness stand?

12 MARSHAL MANSFIELD: Do you want the jury, your
13 Honor?

14 THE COURT: Yes, let's have the jury back.

15 JAMES T. WALKER,
16 a witness called at the instance of the United States of
17 America, having been previously duly sworn, was recalled
18 and testified further as follows:

19 THE COURT: Mr. Hooker desires further questions,
20 Mr. Walker, so just have a seat and then you will be excused.

21 (Thereupon, the jury of 12 and 4 alternates
22 were brought into open court and the following proceedings
23 were had, to-wit:)

24 MR. HOOKER: Are you all through with this
25 witness?

1 MR. BERKE: Representing Mr. Hoffa, in view of
2 the fact that the Court has already instructed the jury as
3 to statements as it now stands were not admissible against
4 Mr. Hoffa we would like to reserve the right to further
5 cross-examination until such time as we think it's appro-
6 priate.

7 THE COURT: The Court understood that the
8 defendants desire to reserve further cross-examination at
9 this time but if you have any examination you wish to make
10 at this time you may make that or you may reserve it.

11 MR. BRANSTETTER: May it please the Court, on
12 behalf of the Defendant Campbell we would prefer to reserve
13 cross-examination and we would request the Court as pre-
14 viously to instruct the jury that the testimony of this
15 witness was not to be used or considered at this point as
16 against the Defendant Campbell.

17 THE COURT: Well, the Court has given heretofore
18 what the Court deems to be the appropriate instruction in
19 that regard. All right.

20 MR. HOOKER: Two or three questions.

21 REDIRECT EXAMINATION

22 BY MR. HOOKER:

23 Q You were asked about a number of interviews you
24 had this morning with representatives of the government. In
25 that connection I want to ask you if you were treated

1 courteously or discourteously?

2 A Courteous.

3 MR. SCHIFFER: Objected to, your Honor, that's
4 entirely immaterial.

5 THE COURT: Sustain the objection.

6 BY MR. HOOKER:

7 Q Were you ever threatened in any way?

8 MR. HAGGERTY: May the jury be instructed to
9 disregard that?

10 THE COURT: Yes, disregard that question
11 and answer.

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1 MR. HOOKER: They brought it up about how many
2 people were present and how many times he had been interviewed,
3 and I want to ask him if he had been threatened in any way.

4 MR. SCHIFFER: Objected to, your Honor.

5 THE COURT: Overrule that objection.

6 THE WITNESS: Courteously.

7 BY MR. HOOKER:

8 Q Were you threatened in any sort of way?

9 A No, sir.

10 Q Coerced in any way?

11 A No, sir.

12 Q Or offered promise of anything?

13 A No, sir.

14 Q Were you asked to do anything else other than
15 just to tell the truth?

16 A That is all, sir.

17 MR. HOOKER: That is all.

18 MR. SCHIFFER: I have just a few questions on this
19 point reserving cross examination.

20 RE CROSS EXAMINATION

21 BY MR. SCHIFFER:

22 Q Isn't it a fact, it is a fact, is it not, that
23 as of this date you are still the same occupation you had with
24 the police department as you had at the time of these occur-
25 rences you have related?

- 1 A No.
- 2 Q Pardon me?
- 3 A No.
- 4 Q Did you understand my question?
- 5 A Yes, sir.
- 6 Q You are still a police officer of the Nashville
- 7 Police Department?
- 8 A No, sir, same occupation.
- 9 Q Pardon me?
- 10 A But not the same occupation.
- 11 Q You are still a police officer, are you not?
- 12 A I am still a police officer. At that time I was
- 13 with the Metropolitan Police Department.
- 14 Q And since you had these interviews with the FBI
- 15 and the government attorneys you are still a policeman, are
- 16 you not?
- 17 A Yes, sir.
- 18 Q And nobody has reprimanded you for anything you
- 19 might have done, have they?
- 20 A No.
- 21 Q And so far as promises are concerned, nothing was
- 22 put in writing to you, was it, as for what you were giving
- 23 the testimony the government asked you to give?
- 24 A Nothing in writing.
- 25 Q Nothing in writing?

1 A No, sir.

2 Q And up to this very moment as you sit here today
3 there has been no change in your official connection with the
4 police department of Nashville, as of now and going all the
5 way back now to October, November, and December 1962, has
6 there?

7 A May I explain something, your Honor?

8 THE COURT: Yes.

9 THE WITNESS: Previously the reason I said as I
10 did, previously I was with the Sheriff's Department. And now
11 I am with the Metropolitan Police Department.

12 BY MR. SCHIFFER:

13 Q And in your capacity as a police officer whether
14 with the Sheriff's office of Davidson County, Tennessee, or
15 as a police officer with the Department of Police in Nashville
16 Tennessee, nobody to this very day has even reprimanded you,
17 have they?

18 A No.

19 Q And so far as your official duties are concerned
20 and your responsibilities, and your present position and
21 connection with that department, nobody has sought to make
22 any change in your status, have they?

23 A No, sir.

24 MR. HOOKER: We submit all of this is repetitious,
25 and gone over several times.

1 THE COURT: Yes, sir.

2 MR. SCHIFFER: Mr. Hooker brought that up.

3 MR. HOOKER: No, I didn't bring that up.

4 BY MR. SCHIFFER:

5 Q You have suffered nothing by reason of anything
6 you have testified to here in this case, have you?

7 A No.

8 Q And your superiors knew it, did they not?

9 A I don't know about that.

10 Q Did you have discussions with them?

11 A No.

12 Q Did you make known to the representatives of the
13 federal government prior to today what you have testified to?

14 A I have never been asked by them if I have talked
15 to them.

16 Q I'm just asking you this question as to all of
17 your testimony today the federal government authorities you
18 spoke with knew about this on April 1, 1963, did they not?

19 MR. HOOKER: If your Honor please, that was asked.

20 THE COURT: Sustain that objection.

21 MR. HOOKER: Asked at least half a dozen times
22 this morning.

23 THE COURT: Sustain the objection.

24 BY MR. SCHIFFER:

25 Q Just one further question, there has been no

1 change so far as your change in your official connection with
2 either the Sheriff's office or the Police Department of
3 Nashville by reason of your testimony and the facts you have
4 related in this case, has there?

5 A There has been no change in my status.

6 THE COURT: Mr. Walker, just to clear up one item.

7 BY THE COURT:

8 Q As I understand, you were at one time connected
9 with the Deputy Sheriff's office, with the Sheriff's Depart-
10 ment of Davidson County?

11 A Until April 1st.

12 Q And then Nashville and Davidson County adopted
13 metropolitan government?

14 A That's correct.

15 Q And at that time you came upon the metropolitan
16 police force?

17 A That's correct, sir.

18 THE COURT: All right. Anything further? Is
19 there anything further? If nothing further, Mr. Walker --

20 MR. BERKE: If your Honor please, we would like
21 your Honor to instruct the witness between now and the time
22 he is recalled for cross examination not to discuss his
23 evidence.

24 THE COURT: Yes, Mr. Walker.

25 MR. BERKE: With either the government attorneys

1 or anyone else.

2 THE COURT: Mr. Walker, do not discuss your
3 testimony with anyone in the event you should for any purpose
4 be recalled to testify, whether you will be recalled or not
5 the Court does not know at this time, but remain available,
6 in that respect. All right, sir.

7 (Witness excused.)

8 MR. HOOKER: We want to call Carl Edward Fields.

9 THE COURT: Mr. Fields, everybody is interested
10 in what you have to say, so just speak out loudly enough so
11 everyone in the courtroom can hear if you will, please.

12 CARL EDWARD FIELDS,
13 a witness called at the instance of the United States of
14 America, having first been duly sworn, was examined and
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. HOOKER:

18 Q Is this Carl Edward Fields?

19 A Yes, sir.

20 Q Carl, how old are you?

21 A Thirty-two.

22 Q Where do you reside?

23 A 1640 Northview Avenue.

24 Q How long -- is that in Nashville, Tennessee?

25 A Yes, sir.

- 1 Q How long have you lived at that address?
- 2 A About two months.
- 3 Q About two months?
- 4 A Yes, sir. I moved.
- 5 Q Where did you live prior to that?
- 6 A 915 Fourteenth Avenue, North, in the Andrew
- 7 Jackson Apartments.
- 8 Q Now, is the address at which you were residing
- 9 when the matters that I'm going to inquire about related to
- 10 this case occurred?
- 11 A Yes, sir.
- 12 Q 915 Fourteenth Avenue, North?
- 13 A Yes, sir.
- 14 Q What is the extent of your education?
- 15 A Finished high school and had a year of college.
- 16 Q Where did you go to college?
- 17 A A&I State College.
- 18 Q Is that in Nashville?
- 19 A Yes, sir.
- 20 Q Where are you presently -- where were you employed
- 21 in the early -- in 1962 and in the early part of 1963?
- 22 A Standard Sales Company, 165 Second Avenue, North.
- 23 Q Are you still employed there?
- 24 A Yes, sir.
- 25 Q What kind of business is that?

1 A That is a wholesale business.

2 Q Now, at any time in 1962 did you have a conversa-
3 tion with James T. Walker normally known as Jack Walker?

4 A Yes, sir.

5 Q Where did your first conversation with him occur?

6 A Well, I was at work and he called me at work.

7 Q Called you at work, do you remember about when
8 that was?

9 A It was the latter part of October or first of
10 November, between there.

11 Q Where was your father at that time?

12 A At that time?

13 Q Yes.

14 A He was at home.

15 Q Well, I mean, what was he doing?

16 A Well, he was on the jury.

17 Q On the jury in the case there in Nashville?

18 A Yes, sir.

19 Q Did you know what court that was in?

20 A Yes, sir, it was on the Hoffa jury.

21 Q On the Hoffa jury?

22 A Yes, sir.

23 Q All right, in this conversation that you had with
24 Jack Walker, what did he say?

1 A He asked me--, I had been looking for a job and
2 he asked me could I come by the house that evening after I
3 had got off from work and I told him I could.

4 Q And did you go?

5 A Yes, sir.

6 Q When you got to Jack Walker's house that evening
7 was there anyone else present?

8 A No, sir.

9 Q Did anyone else come to the house on that occasion?

10 A No, sir.

11 Q Did you have a discussion with Walker at that
12 time?

13 A Yes, sir.

14 Q What was said in that conversation?

15 MR. BRANSTETTER: Now, may it please the Court,
16 I rather doubt if the statements made by Walker to this
17 witness would be competent, they are the rankest sort of
18 hearsay.

19 MR. HOOKER: We think he was acting, if Your
20 Honor please, as the agent for this defendant, we expect to
21 prove that, the defendant Parks, already proven it, actually.

22 MR. BRANSTETTER: May it please the Court, there
23 is no evidence of any agency.

24 MR. HOOKER: According to this witness' own
25 testimony Walker was the man that went with Parks to see

1 Mattie Leath, made some of--

2 MR. BRANSTETTER: (Interposing) Now, may it
3 please the Court, if counsel is going to discuss this before
4 the jury we want a like privilege to go into it in complete
5 detail.

6 THE COURT: Well, ladies and gentlemen, in no
7 event would you consider this testimony as to any defendant
8 other than the Defendant Mr. Parks and you would only consider
9 it as to Mr. Parks in accordance with the instruction which
10 the Court has given you about the admissibility of hearsay
11 statements of agents or alleged agents or the admissibility
12 of hearsay statements of conspirators or co-conspirators and
13 only as to the Defendant Mr. Parks, you would not consider
14 it as to any other defendant.

15 MR. SCHIFFER: If it please the Court, may I offer
16 an objection to this testimony, Your Honor, on behalf of
17 the Defendant Parks, on the ground, firstly, it's rank
18 hearsay, secondly, it wasn't said in the presence of Mr.
19 Parks, and, thirdly and most importantly, the witness himself,
20 Walker, disclaims any agency and in direct response to
21 questions time after time after time today on cross
22 examination said he himself was not an agent.

23 Now, I respectfully submit, Your Honor, that if
24 the prosecution here is going to insist upon an agency
25 theory, that they now be forced to at this time prove the

1 agency directly in the meaning with and with the spirit of
2 count three, which we are listening to at the present time,
3 and until such time as they actually establish an agency,
4 Your Honor, then they should be prohibited from bringing in
5 this kind of hearsay rank evidence, not said in the presence
6 of the defendant and upon those grounds, Your Honor, I ask
7 for a request of the jury to discount and disregard all of
8 this testimony insofar as Mr. Parks is concerned until such
9 time as the government puts on its proof as to the agency.

10 THE COURT: I am going to sustain the objection
11 at this time as to any statement made by Mr. Walker to this
12 witness and if you gentlemen desire to pursue that further
13 you can take it up.

14 MR. HOOKER: Well, I will go about it this way.

15 BY MR. HOOKER:

16 Q You did have a conversation, don't state what
17 you said, with Walker at Walker's house. }

18 A Yes, sir.

19 Q Then where did you go after that?

20 A I went home.

21 Q Did you leave home again that night, that evening?

22 A Yes, sir.

23 Q Where did you go then?

24 A I went to 22nd and Osage, Walker has a little
25 printing shop there.

1 Q And who was there?

2 A Well, when I walked in Walker and two other
3 fellows.

4 Q Do you know who they were?

5 A No, sir.

6 Q How did you travel from your house over to
7 Walker's printing shop?

8 A I was keeping my sister's car at the time and I
9 used her car.

10 Q What is your sister's name?

11 A Mattie Leath.

12 Q Mattie. Is she Mattie Fields Leath?

13 A That's right.

14 Q She is the daughter of Gratin Fields that was on
15 the jury?

16 A That's right.

17 Q Now, then after you reached this place there and
18 these two men were there, did anyone else arrive?

19 A Shortly after a fellow arrived and Walker introduced
20 him to me as Thomas Parks.

21 Q Introduced you to him as Thomas Parks?

22 A Yes, sir.

23 Q Do you see the man that was introduced to you
24 that night sitting here in the courtroom introduced to you as
25 Thomas Parks?

1 A Yes, sir, the fellow sitting over there.

2 Q Which one?

3 A The colored fellow sitting right there.

4 Q Come down, if there won't be no misunderstanding
5 about it, and point him out.

6 A Well, the fellow sitting there with his hand on
7 his chin.

8 Q With his hand on his chin?

9 A Yes, sir.

10 Q All right. And what did the man sitting here now
11 with his hand on his chin, what, if anything, did he say to
12 you?

13 A Well, he asked me, he said his car was parked
14 across the street, to come over and sit in his car.

15 Q To go over across the street and in the car with
16 him?

17 A Yes.

18 Q Was that his car?

19 MR. SCHIFFER: Objected to, Your Honor, unless
20 the witness knows.

21 THE COURT: Sustained.

22 BY MR. HOOKER:

23 Q Well, was it your car?

24 A No, sir.

25 Q What kind of car was it?

1 A It was a Buick.

2 Q What are those pictures? Do you remember what
3 color it was?

4 A I think it was a two-tone green.

5 Q Two-tone green?

6 A Yes.

7 Q Look at the picture there that has been filed
8 as Government Exhibit No. 2, I believe. State if the car
9 that you saw that you went there parked was similar to that
10 one?

11 A Yes, sir.

12 MR. ALEXANDER: That's No. 3, Mr. Hooker.

13 MR. HOOKER: What?

14 MR. ALEXANDER: Exhibit No. 3.

15 BY MR. HOOKER:

16 Q No. 3. What did you do after you got over to
17 the car?

18 A Well, after we got in the car we sat down in the
19 car.

20 Q Did you get in the car?

21 A Yes, sir.

22 Q What seat did you get in?

23 A Front seat.

24 Q Both of you?

25 A Yes, sir.

1 Q All right. Now, what did this man that you
2 pointed out here in the courtroom say to you there?

3 A He asked me was my father on the Hoffa jury and
4 I told him.

5 Q What did you tell him?

6 A I told him yea.

7 Q All right. What else did he say?

8 A Well, he asked me how close was me and my father
9 and I told him.

10 MR. BRANSTETTER: May it please the Court, we
11 are having difficulty hearing the witness.

12 Q Speak out a little louder, Carl, so all of these
13 gentlemen can all hear you.

14 A Well, he asked me how close was me and my father
15 and I told him just about as close as any son and father
16 relationship goes.

17 Q What else did he say?

18 A Well, he went on to say that--, asked me was my
19 father on the jury, Hoffa jury. And I told him yes. And
20 then he said, "Well, you know Bobby Kennedy is out to get
21 Mr. Hoffa." And he asked me, he say did I think I could talk
22 to my daddy as far as voting for acquittal.

23 And I said, "No, I couldn't talk to my father
24 about anything like that." I say, "He wouldn't go for
25 anything like that."

1 And he said, "Well, if you could talk to your
2 father about it that it would be five thousand in it apiece
3 for you."

4 I said, "Well, no, I still couldn't talk to my
5 father about nothing like that." I say, "He wouldn't go for
6 it."

7 Q You mean five thousand to you and five thousand
8 to your father?

9 A Yes, sir.

10 Q Now, was that the extent of that conversation
11 there that night?

12 A No, sir. He asked me if I could just tell him
13 what kind of a suit my father would be wearing or what kind
14 of coat he would be wearing, that it would help him a lot,
15 and I told him I don't know what kind of clothes he would be
16 wearing because I just--, I didn't live with my father.

17 And then he took five twenty-dollar bills and
18 laid it on the seat of the car and he say, "If you can just
19 tell me what kind of suit he would be wearing or what kind
20 of coat he would be wearing tomorrow", he said, "If you can
21 give me that information before nine o'clock," he say, "It
22 would be--, I give you another hundred dollars."

23 So I told him I didn't know and I say, "I don't
24 want to take your money because I doubt if I can talk to
25 my father about anything like that."

1 Q And who did he say it would help if you would
2 do that?

3 A He said it would help him a great deal if I could
4 tell him what kind of suit or what kind of tie he would be
5 wearing.

6 Q And he gave you five twenty-dollar bills?

7 A Yes, sir.

8 Q And did you put them in your pocket?

9 A Yes, sir.

10 Q Did you see his wallet at the time he gave you
11 the five twenty-dollar bills?

12 A Yes, sir.

13 Q How did it appear?

14 MR. SCHIFFER: Objected to, Your Honor.

15 THE COURT: Overruled.

16 Q How did the wallet appear, was it fat or thin?

17 MR. SCHIFFER: Objected to, Your Honor. This
18 is a conclusion, who knows?

19 THE COURT: Sustained.

20 Q All right. How did it appear?

21 A It appeared--

22 MR. SCHIFFER: (Interposing) I thought it was
23 sustained, Your Honor.

24 THE COURT: Overrule the objection as to how it
25 appeared. I sustained the objection as to his description of

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1 it being leading.

2 Q How did it appear, Carl?

3 A Well, it appeared fat.

4 Q Now, did you see him any more after that?

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End
Tk 21

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follows

- 1 A No, sir, I didn't see him any more after that.
- 2 Q Well, in that same conversation--first, I want
- 3 to ask you, during this conversation was there anyone else
- 4 within hearing distance of you?
- 5 A No, sir.
- 6 Q Just the two of you in this green two-toned
- 7 Buick together?
- 8 A Yes, sir.
- 9 Q Now, do you recall anything else that was said
- 10 in that conversation?
- 11 A Well, he said if I could find out what kind of
- 12 suit, what color suit my father, what color tie, he would be
- 13 wearing and he gave me a telephone number to call him and
- 14 said if I could find that out call him before nine o'clock
- 15 that night.
- 16 Q Gave you a telephone number and told you to call
- 17 him before 9:00 that night?
- 18 A Yes, sir.
- 19 Q Was there anything said about discussing it with
- 20 anybody else?
- 21 A No, he said don't discuss it with anybody else.
- 22 This is just between me and you.
- 23 Q Between you and him?
- 24 A Yes, sir.
- 25 Q In connection with calling him at nine o'clock

1 that night, did he make any statement about calling anybody
2 else?

3 MR. BRANSTETTER: Now, may it please the Court,
4 he is leading the witness.

5 MR. HOOKER: No, sir, I'm directing his attention
6 to the proposition I am inquiring about.

7 MR. BRANSTETTER: He has asked this witness three
8 times what other conversation was involved and is now seeking
9 to put words in his mouth.

10 THE COURT: Sustain the objection.

11 MR. HOOKER: Well, of course, I want to be
12 differential to your Honor's ruling and I want to direct
13 his attention to a certain matter.

14 THE COURT: Well, proceed to inquire and see if
15 he has any recollection and if it is necessary to direct his
16 attention to any specific matter, the Court will have to
17 pass upon it at that time.

18 BY MR. HOOKER:

19 Q The point I am getting at, in connection with
20 the telephone call--

21 MR. BRANSTETTER: Now, may it please the Court,
22 he is doing the same thing. Counsel knows--

23 MR. HOOKER: He hasn't let me finish yet.

24 BY MR. HOOKER:

25 Q Told you to call, I believe you stated, by nine

1 o'clock?

2 A Yes, sir. Before nine o'clock.

3 Q Was there any statement made about calling any
4 other place?

5 MR. BRANSTETTER: Now, may it please the Court,
6 he is asking exactly the same question the Court has told
7 him not to and he is telling the witness what to say by
8 asking it and I move to strike it.

9 THE COURT: Overrule the objection.

10 BY MR. HOOKER:

11 Q Go ahead and answer it, Carl.

12 A He told me he had to make a call to Louisville
13 before nine o'clock if I could let him know.

14 Q That he had to make a call to Louisville before
15 nine o'clock?

16 A Yes, sir.

17 Q All right. Now, where did you go after this
18 conversation in the green Buick?

19 A I went to my mother's house.

20 Q Was she there?

21 A Yes, sir.

22 Q And I won't ask you to state what she said to
23 you, but did you have a conversation with her?

24 A Yes, sir.

25 Q Now, while you were at your mother's house,

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state whether or not you had a telephone call?

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A Yes, sir, I had a call.

End Tk 22³

Tk 22A fls.⁴

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1 Q Who was on the other end of the line in that
2 telephone call to your mother's house that night, the same
3 night that you talked to Parks, Defendant Parks?

4 A Jack Walker.

5 Q Jack Walker?

6 A Yes, sir.

7 Q And what did he say?

8 A He just asked me --

9 MR. BRANSTETTER: Now, may it please the Court --

10 MR. HOOKER: (Interposing) Your Honor, if we
11 haven't established agency now I don't know how we can go
12 about it. We proved that Jack Walker made arrangements for
13 him to meet this man and here this conversation took place
14 and we are following up that same matter.

15 MR. BRANSTETTER: Now, may it please the Court,
16 this Court knows and counsel knows full well that you cannot
17 prove agency by the purported agent and that is the only
18 person that has been on the witness stand this far with
19 reference to it.

20 THE COURT: I sustain the objection at this time.
21 Again, if you desire to pursue it --

22 MR. HOOKER: (Interposing) Sir?

23 THE COURT: Again, if you desire to take up the
24 matter further, we can take it up at the appropriate recess,
25 but again I sustain the objection.

1 BY MR. HOOKER:

2 Q Again, without stating what he said, Walker called
3 you?

4 A Yes, sir.

5 Q Now, where did you go from your father's house?

6 A I went to my house.

7 Q And did you receive a call there?

8 A No, sir.

9 Q Did you call anybody?

10 A I called Parks' number he had given me to call.

11 Q What time did you call him?

12 A About quarter to nine.

13 Q And what did you tell him?

14 A I told him that I couldn't talk to my father about
15 anything like that and I asked him did he want the money
16 back and he said no, you can just keep that for your trouble.

17 MR. BRANSTETTER: May it please the Court, we are
18 having trouble hearing.

19 MR. HOOKER: Speak out louder, Carl.

20 MR. BRANSTETTER: Now, I didn't hear what the
21 witness said.

22 BY MR. HOOKER:

23 Q Say it over again, what happened now in the
24 conversation between you and the defendant, Tom Parks, from
25 your home that same night?

1 A Well, I called him and I told him I couldn't
2 talk to my father about anything like that, and I asked him
3 did he want his money back. And he said, "No, you can just
4 keep the money for your trouble."

5 Q For your trouble?

6 A Yes, sir.

7 Q And you obliged him and kept it, I guess?

8 A Yes, sir.

9 Q Now, did you have any further conversations with
10 Parks after that?

11 A No, sir.

12 Q Now, Carl, have any representatives of the United
13 States Government prior to your appearance here as a witness
14 talked to you about this matter?

15 A Yes, sir.

16 Q Did any members of the FBI talk to you about it?

17 A Yes, sir.

18 Q How many times did the FBI, representatives of the
19 FBI talk to you?

20 A Twice.

21 Q Did you tell them the facts about it?

22 A Well, the first time I didn't, but the second
23 time I did.

24 Q Second time you did?

25 A Yes, sir.

1 Q Did the members of the FBI or any other representa-
2 tives of the United States Government ever at any time threaten
3 you about this matter?

4 A No, sir.

5 MR. BRANSTETTER: May it please the Court, I
6 think the questions are inappropriate. He is apparently
7 seeking to establish some prior consistent statement before
8 this man has been on cross examination and also --

9 MR. HOOKER: (Interposing) No.

10 THE COURT: Overrule the objection.

11 BY MR. HOOKER:

12 Q You say they did not?

13 A No, sir.

14 Q Any representatives of the government make you
15 any promises?

16 A No, sir.

17 Q Did any representatives of the government ask you
18 to do anything other than to tell the full truth?

19 A No, sir.

20 Q Did you ever talk to anyone interested in this
21 case not representing the government?

22 A Yes, sir.

23 Q To whom did you talk?

24 A I talked to Mr. Osborn.

25 Q Did you make the signed, written statement?

1 A Yes, sir.

2 Q Was the statement true?

3 A No, sir.

4 Q Well, now, I want --

5 MR. BRANSTETTER: I didn't understand the response.

6 MR. HOOKER: Said no, that it was not true that
7 he gave Mr. Osborn.

8 BY MR. HOOKER:

9 Q Why did you give Mr. Osborn a statement that was
10 not true?

11 A Because I didn't want to become involved in it.

12 MR. SCHIFFER: I couldn't get that answer, your
13 Honor.

14 THE COURT: I did not want to become involved.
15 Speak out, Mr. Fields.

16 BY MR. HOOKER:

17 Q And what is your answer about why you stated that
18 the first time you talked to representatives of the FBI that
19 you didn't tell them the truth?

20 MR. SCHIFFER: Objected to, your Honor, the
21 question.

22 MR. HOOKER: Why was it?

23 MR. SCHIFFER: Objected to, your Honor, now we
24 have the prosecutor in the face of a signed, sworn affidavit
25 now trying to explain away why he took a false oath and now

1 trying to rehabilitate his own witness on redirect, your
2 Honor, and I submit that under any rule that is forbidden.

3 MR. HOOKER: I'm just trying to develop the facts
4 as to what took place.

5 MR. SCHIFFER: He is dealing with a sworn affidavit,
6 your Honor, and now he is trying to rehabilitate the fact that
7 he gave a false statement under his own admission and swore
8 to it.

9 THE COURT: Overrule the objection.

10 BY MR. HOOKER:

11 Q Why did you not tell the FBI the truth the first
12 time that you talked with them?

13 A I didn't want to become involved in it.

14 Q What I want to ask you now, you testified before
15 these ladies and gentlemen of the jury on your oath, have you
16 told the truth now?

17 MR. BRANSTETTER: Now, may it please the Court,
18 he is under oath to tell the truth without counsel requesting
19 it.

20 THE COURT: Sustain that objection.

21 MR. BRANSTETTER: Maybe he doesn't want to vouch
22 for his veracity if that is what counsel is going to take the
23 position of.

24 MR. HOOKER: That is all.

25 MR. SCHIFFER: Pardon me, your Honor. Your Honor,

1 I've just been handed a certain document as Jencks statements.
2 May we have a few moments to consult and read the statements
3 before cross examination?

4 THE COURT: Yes.

5 MR. SCHIFFER: Thank you.

6 THE COURT: All right, do you care to have --

7 MR. NEAL: (Interposing) All statements except
8 for one paragraph in one statement was given this morning.

9 MR. BERKE: Just a minute, given right after the
10 noon recess.

11 MR. NEAL: That is just a paragraph there.

12 MR. BERKE: If your Honor please, these statements
13 were given right after the noon recess. They are rather long
14 statements. We haven't had time to analyze them and we would
15 like to suggest if they would cooperate with us and give them
16 to us just before --

17 MR. NEAL: (Interposing) Your Honor, as a matter
18 of fact, we have been giving them the statements the evening
19 before and Mr. Berke knows that.

20 MR. BERKE: You gave us the --

21 THE COURT: (Interposing) Gentlemen, gentlemen,
22 you gentlemen know the rules in this respect and the Court
23 knows the rules in this respect and there is no requirement
24 that the statements be given prior to the completion of the
25 examination of the witness. You have now asked for a recess

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1 to look at it and the Court is giving you that recess and
2 that is all that is appropriate. All right, shall we take
3 about a ten-minute recess?

4 (Thereupon, at 2:07 o'clock, p.m., court was
5 in recess.)

22A End
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THE COURT: All right.

MR. HAGGERTY: May I address the Court?

THE COURT: Yes, sir.

MR. HAGGERTY: May it please the Court, we have been served with what is patently an excerpt from some other document. It consists of one paragraph. May I inquire of the Court if this is--if the Court will inquire of the government if this is cut out, merely a cut-out from an entire statement, has that entire statement been furnished your Honor to decide whether or not we should be given the entire statement?

THE COURT: No statements of any kind have been submitted to the Court for the Court's examination, Mr. Haggerty.

MR. HAGGERTY: Then if I may hand this up to your Honor and show you a report from the Federal Bureau of Investigation and show you the short excerpt.

THE COURT: All right.

MR. HAGGERTY: Upon which I base my statement.

MR. NEAL: May I state for the record, your Honor, that the statements given to defense counsel are all of the statements pertaining to the Witness Fields. They have been excerpted from a report but the report concerns other matters and other witnesses. We will be happy to furnish a full report to the Court, of course.

1 MR. HAGGERTY: Then I think that should be done
2 forthwith.

3 THE COURT: All right.

4 MR. HAGGERTY: May I state to your Honor to
5 caution the government that under the case of Brady vs. Mary-
6 land, I haven't the Supreme Court citation but it's in U. S.
7 Law Week of May 13, 1963, Case No. 4435, 4436, in which the
8 Supreme Court of the United States was held on this very
9 thing on the Jencks statements, "We now hold that the sup-
10 pression by the prosecution of evidence favorable to an
11 accused upon request violates due process where the evidence
12 is material, either to guilt or to punishment, irrespective
13 of the good faith or bad faith of the prosecution. A prose-
14 cution that withholds evidence on demand of an accused which
15 it made available would tend to exculpate him or reduce the
16 penalty he shares at trial that bears heavily on the defendant."

17 THE COURT: All right.

18 MR. SILETS: Your Honor, if I may be heard for
19 just a moment. I believe--I don't have the statute before
20 me but I sent one of the Marshals out for that, Section 3500
21 Title 18, specifically sets forth as a statutory requirement
22 that the government pass up to the Court the full statement
23 so that if there is an excision the Court may rule upon the
24 remaining matters and if, in fact, the Court concludes the
25 government has acted properly the Court will then seal the

1 entire document with the excision so that it may be main-
2 tained for the Court of Appeals if it gets that far.

3 I am surprised that the Court hasn't followed
4 that mandate of the Congress.

5 MR. NEAL: Mr. Silets, you weren't listening a
6 while ago when I said that is the full statement, it is
7 included in an FBI report. Your Honor, Mr. Silets is a
8 former Assistant United States Attorney and knows that some-
9 times you will get reports or get interviews of 15 or 20
10 people, they will be included in one report.

11 It's my information that that is the full state-
12 ment of this witness and the reason we didn't turn it over
13 to the Court was because there is no excision, however, since
14 the Court would be fully advised of the matter we will turn
15 over the full report in which that is included.

16 THE COURT: All right. That likewise then will
17 be taken up after the jury is recessed this afternoon and
18 considered by the Court.

19 MR. SILETS: Your Honor--

20 MR. HAGGERTY: (Interposing) I call your Honor's
21 attention to the fact that we are about to cross-examine.
22 There should be a determination on that fact at this time
23 as to whether or not these are all of the statements we are
24 entitled to.

25 THE COURT: Well, now, gentlemen, do you mean

1 that we should recess and adjourn this hearing and conduct
2 a hearing in that respect?

3 MR. HAGGERTY: Absolutely, your Honor, because
4 we have the right under the statute and under the decisions.

5 THE COURT: You will be given an opportunity,
6 Mr. Haggerty, to make any further examination if you desire
7 to after--

8 MR. HAGGERTY: (Interposing) But how can we
9 conduct a cross-examination at this time and now it is our
10 turn?

11 THE COURT: All right. Is that request in
12 regard to this witness?

13 MR. HAGGERTY: Yes, your Honor, or any other
14 witness with the tactics that are employed by the government
15 here.

16 MR. NEAL: I resent that, your Honor. We have
17 gone far beyond what the law requires in giving to Mr.
18 Haggerty all Jencks statements prior to the time we had to
19 them. The tactics here have been to be cooperative when we
20 can be. Now, Mr. Haggerty has the Tippens statement and
21 Tippens has never gone on the stand. He has had his state-
22 ment since--when was it, Mr. Haggerty?

23 MR. HAGGERTY: Wait a minute, Tippens did go
24 on the stand.

25 MR. NEAL: He did not testify, did he?

1 MR. HAGGERTY: No, but--

2 MR. NEAL: (Interposing) But you had his state-
3 ment.

4 MR. HAGGERTY: Yes.

5 THE COURT: Gentlemen, gentlemen.

6 MR. HAGGERTY: If you want to play that way it's
7 all right with us.

8 THE COURT: The law, I think, is rather clear
9 upon this and that is that the government is not required
10 to submit any statement until after the witness has testi-
11 fied. Now, as a matter of speeding the hearing along, the
12 Court has suggested that the government make available
13 statements prior to the examination of the witness but that
14 is a matter that addresses itself entirely to the discretion
15 of the government whether they do that or not.

End Tk 23
Tk 24 fls.

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1 MR.NEAL: May I explain something, Your Honor,
2 the government wants to do that. The government wants to go
3 on with this trial and we have endeavored to do this. As of
4 last night every Jencks statement had been turned over to
5 Mr. Haggerty including Mr. Tippens, who has not testified,
6 have been turned over to Mr. Haggerty except this man
7 Fields. Mr. Fields. It was not turned over last night
8 because we didn't have enough copies. Now, if Your Honor
9 will recollect, Mr. Haggerty and I had an agreement at one
10 time here that I would turn over to Mr. Haggerty the original
11 and he would produce the copies whereupon Mr. Silets objected
12 to that.

13 THE COURT: Really, gentlemen, I will be glad to
14 hear you but this is a matter that you gentlemen will just
15 have to negotiate among yourselves. It is not a matter that
16 needs any public discussion. It is not a matter that needs
17 any discussion before the court. It is a matter that the
18 Court has no discretion in and if you can agree on something,
19 very well, agree among yourselves.

20 If you can't agree, then very well, that is
21 satisfactory, too. But let's in any event the Court is not
22 aware of anything having been done up to this time that is
23 not strictly in accordance with the law in regard to the
24 Jencks act and if it is requested of counsel that we inquire,
25 the Court as yet I'm not aware of any foundation having

1 been laid with respect to this witness with respect to any
2 statement not having been furnished. But if the government
3 will please provide the Court with the full record from which
4 this statement is a part, then the Court will make that
5 inspection at this time.

6 Now, if it is likewise the request of the
7 defense counsel that we take up at this time the examination
8 of any witnesses including Mr. Sheets, on the Jencks state-
9 ment on behalf of the witness Mr. Walker, the Court will
10 interrupt the trial at this time and do that. I can't see
11 why that is necessary, but the Court will do that if that
12 is your request.

13 MR. NEAL: May the record show that I'm handing
14 up the full report in which the complained of statement is
15 included and Your Honor will see that the rest of the report
16 has nothing to do with any statement made by Mr. Fields.

17 THE COURT: May I see the copy of the statement
18 that was furnished to defense counsel?

19 MR. SCHIFFER: May I inquire, Your Honor, as to
20 who took the statement? No identification as to the name
21 of the agent who took that statement is on it.

22 MR. NEAL: Now, there again, may it please the
23 Court, I advised one of the defense counsel just at the recess
24 who took the statement and when it was taken.

25 MR. BRANSTETTER: May it please the Court, there

1 are several defense counsel. I'm not in this controversy
2 over the method of handing out these papers at the moment,
3 but counsel for the government cannot say to one defense
4 counsel representing Mr. Hoffa, I represent Mr. Campbell,
5 says, I'm giving you these for Mr. Hoffa or Mr. Tweel.

6 Now, we want it clearly understood the parties
7 here are representing the various defendants and are entitled
8 to separate treatment just as the defendants are entitled to
9 separate treatment.

10 THE COURT: Have you given the Court--, there is
11 nothing in the report that has been given to the Court that
12 in any way relates to this witness. There is nothing in this
13 report that in any way relates to this witness, gentlemen.

14 MR. NEAL: May it please the Court, that is the
15 full report. Mr. Hoffa has the original of the excision of
16 the report.

17 THE COURT: Gentlemen, there is absolutely
18 nothing--

19 MR. NEAL: Mr. Hoffa has the original of the
20 excision and he will not turn it over to me. Maybe he will
21 turn it over to the Court. We passed that over, the part
22 that was passed over is the part of the report Your Honor
23 doesn't have.

24 MR. SCHIFFER: Well, it is obvious, Your Honor,
25 looking at the original that that portion has been snipped off,

1 a sheet, and we feel that we have a right to inquire--

2 THE COURT: Let the Court see the original.

3 MR. SCHIFFER: Mr. Berke has it.

4 MR. NEAL: Now, when Your Honor gets the original
5 it will have the entire report. That original was passed
6 over to defense counsel.

7 MR. SCHIFFER: It has the physical appearance of
8 an excision.

9 THE COURT: Yes, sir, there is a portion of Page
10 No. 3 on this report that has been--, Page No. 3 has been
11 cut in half with the portion just furnished the Court on
12 this witness corresponding to the portion of the page
13 remaining in the report and there is nothing in the remainder
14 of the report, gentlemen, that in any way refers to this
15 witness.

16 MR. NEAL: Does Your Honor understand why we
17 did not pursuant to Section 3500 Procedure submit the report
18 to the Court? Because the report has nothing to do, it is
19 not, the excision, a part of the statement. It is the entire
20 statement we turned over.

21 THE COURT: Yes. Now, is it the request of
22 counsel that this be preserved in the record for examination
23 and consideration by the Court of Appeals?

24 MR. SCHIFFER: I wonder, Your Honor, may I have
25 it returned my copy which I furnished up to the Court?

1 THE COURT: Yes. In the absence of a request
2 that this be preserved in the record, this report which the
3 Court has examined and which the Court has announced there
4 is no reference to this witness, in the absence of a request
5 that it be preserved in the record I will return it to the
6 government. All right. Now, then, is it the request of
7 counsel that we interrupt the proceedings further at this
8 time for the Court to pursue the matter of the Jencks state-
9 ment relating to the witness, Mr. Walker? That witness has
10 already been excused and is to be called back at the request
11 of counsel.

12 MR. BRANSTETTER: I think, may it please the
13 Court, that there the only matter that would be involved
14 would be relation to the original notes.

15 THE COURT: That's correct, the Court expects to
16 inquire as I understand Mr. Sheets, is he the gentleman who
17 was the FBI agent?

18 MR. HOOKER: Yes, sir.

19 THE COURT: Inquire of Mr. Sheets with regard to
20 that, but I thought we would do that after excusing the
21 jury this afternoon.

22 MR. BRANSTETTER: That will be perfectly all
23 right I think with all defendants.

End Tk
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1 THE COURT: All right, Mr. Schiffer, if you desire
2 to cross examine this witness, we will have the jury return.
3 Have the jury to come in.

4 (Thereupon, the jury of twelve and four alternates
5 were brought into open court and the following proceedings
6 were had, to-wit:)

7 MR. SCHIFFER: May I commence, your Honor?

8 THE COURT: All right, Mr. Schiffer.

9 MR. SCHIFFER: Thank you.

10 CARL EDWARD FIELDS,

11 a witness called at the instance of the United States of
12 America, having been previously duly sworn, was recalled
13 and testified further as follows:

14 CROSS EXAMINATION

15 BY MR. SCHIFFER:

16 Q Mr. Fields, how many conversations, separate
17 conversations, did you have with representatives of the
18 Federal Bureau of Investigation concerning this case?

19 A I had two.

20 Q That was a total number of times you were inter-
21 viewed by the FBI?

22 A The FBI?

23 Q Yes.

24 A Yes.

25 THE COURT: Speak up a little bit.

1 A Yes, two.

2 Q And on both of those occasions when you were being
3 interviewed were notes made of what your responses were to
4 their questions?

5 A Well, the first time he was writing in shorthand,
6 I believe.

7 Q Who was it was writing in shorthand?

8 A Mr. Sheets.

9 Q And who else was present?

10 A No one.

11 Q Did you sign anything?

12 A No, sir.

13 Q And did Mr. Sheets give you those notes or did
14 he keep them himself?

15 A He kept them hisself.

16 MR. SCHIFFER: Your Honor, at this time may we
17 respectfully request the original notes made by Special Agent
18 Sheets concerning the first interview with this witness?

19 THE COURT: All right. The Court will reserve
20 that in accordance with the previous understanding of counsel.

21 MR. SCHIFFER: Yes, sir.

22 BY MR. SCHIFFER:

23 Q And the second time you were interviewed were you
24 interviewed by Mr. Sheets?

25 A Yes, sir.

1 Q And did Mr. Sheets make any notations while he
2 was talking with you about your conversation?

3 A Yes, sir.

4 Q And did you sign anything then?

5 A I don't remember.

6 Q Pardon me?

7 A I don't remember.

8 Q Well, how long ago was it that you had this
9 second conversation with Mr. Sheets?

10 A I don't remember how long it was.

11 Q Well, was it a year ago, two years ago, how best
12 would you estimate?

13 A It was a year ago.

14 Q In 1963?

15 A Yes.

16 Q You don't recall whether you signed anything at
17 all?

18 A Yes, I did sign.

19 Q Pardon me?

20 A Yes, I signed.

21 Q Were there any witnesses to your signature?

22 A Well, another man sitting in the office there.

23 Q Do you know his name?

24 A No, sir, I don't remember his name.

25 Q And you have had some college training, have you

1 not?

2 A Yes, sir.

3 Q And in your college training did you have any
4 subjects dealing with government?

5 A A few.

6 Q And you go to church, I presume?

7 A Yes, sir.

8 Q And both in church and your college courses on
9 government and in high school you discussed and you had dis-
10 cussed before you what it means to be a good citizen, isn't
11 that correct?

12 A Yes, sir.

13 Q And among some of the things you were taught as
14 a precept in church and again brought out in your teachings
15 in the public schools that you must not bear false witness,
16 is that true?

17 A A false what?

18 Q You must not bear false witness.

19 A Yes, sir.

20 Q You remember that, do you not?

21 A Yes, sir.

22 Q Now, then, do you believe you owe any obligation
23 at all as a citizen to the Government of the United States?

24 A Yes.

25 Q Now, Mr. Hooker was asking you some questions a

1 while ago about you giving false answers to a member of the
2 Federal Bureau of Investigation. Do you remember him asking
3 you that question?

4 A Yes, sir.

5 Q And you said you did?

6 A Yes, sir.

7 Q Isn't that correct?

8 A Yes, sir.

9 Q May I ask you this, isn't it a fact -- I with-
10 draw that -- at the time when you saw Mr. Sheets for the first
11 time and the second time the Defendant Parks wasn't present,
12 was he?

13 A No, sir.

14 Q The only persons present that you could see were
15 people who represented the government, isn't that so?

16 A Yes, sir.

17 Q And everybody who was present at the time you
18 were interviewed did not mistreat you, did they?

19 A No, sir.

20 Q And you felt you were in an atmosphere and in the
21 presence of people who would protect you because they
22 represented the government, isn't that so?

23 A Yes, sir.

24 Q All right, sir. Did you not then say to Mr.
25 Sheets, in the presence of other representatives of the govern-

1 ment when you stood in no fear whatsoever, did you not say
2 in substance, "Carl Edward Fields, give your address, on
3 January 29th, 1963, that he is the son of Gratin Fields who
4 recently served on the jury in the trial of James R. Hoffa.
5 He said that he is not acquainted with Thomas E. Parks. He
6 added that he has no information that anyone contacted or
7 attempted to contact his father in an effort to influence his
8 vote in the Hoffa trial. He expressed the belief that no one
9 talked to his father in this regard."

10 Do you recall that?

11 A Yes, sir.

12 Q And that is what you told Mr. Sheets?

13 A Yes, sir, the first time.

14 Q Is that correct?

15 THE COURT: Just let him answer.

16 MR. SCHIFFER: I thought he answered, your Honor.

17 THE COURT: He hadn't finished. What was your
18 answer?

19 A The first time that I --

20 Q (Interposing) That's what you told him?

21 A Yes, sir.

22 Q You recollect that?

23 A Yes, sir.

24 Q And you knew at the time you were telling that to
25 Mr. Sheets, you say today that you told him a pack of lies

1 when you made that statement, isn't that right?

2 A That's right, sir.

3 Q And then as a good citizen you know what it means
4 to take a false oath, do you know the significance of it?

5 A Yes, sir.

6 Q Did you not on the 17th day of January, 1963,
7 take your oath to truth and subscribe before Lela Richardson,
8 Notary Public in the City -- in the State of Tennessee, in
9 the County of Davidson, the following affidavit, "Carl Fields,
10 being first duly sworn, makes oath and deposes as follows:

11 "That he resides at 915 Fourteenth Avenue, North,
12 in Nashville; that he is the son of Gratin Fields who served
13 as a member of the jury in the case of U. S. against James R.
14 Hoffa; that he has a brother named Gratin Fields, Jr., and
15 a sister named Mrs. Mattie Leath;" et cetera.

16 "I was living and working at the address as given
17 above during the trial of James Hoffa. No one talked to me
18 about the trial during its progress or about the fact that my
19 father, Gratin Fields, was a member of the jury. I am not
20 acquainted with, have never talked to," in my case, Mr. Ewing
21 King, the defendant --

22 MR. BERKE: (Interposing) Parks.

23 Q Pardon me, "Ewing Thomas Parks. Z. T. Osborn, Jr.,
24 is the only person who has interviewed me since the trial
25 has been concluded. No member of the FBI or any other govern-

1 ment agency has interviewed me or tried to talk with me about
2 the case. So far as I know I am not acquainted with Mr.
3 Thomas Parks," and naming other individuals. "I do not place
4 any of these people." And you include Tom Parks in those
5 people.

6 "So far as I know no person for the government or
7 otherwise has talked to any of my brothers or sisters about
8 the case since it has been concluded. I see them all --
9 I see all of them off and on, mostly over the weekends and
10 feel sure that they would have mentioned any questioning or
11 mistreatment if it had occurred.

12 "Further deponent saith not."

13 I will ask you to look at this copy and look at
14 the signature and tell this Court and jury whether that is
15 not in fact your statement.

16 A It is.

17 MR. SCHIFFER: May I offer this in evidence at
18 this time, your Honor?

19 THE COURT: All right.

20 (The statement referred to above was marked
21 Exhibit No. 4, Defendant Parks, Witness Fields,
and received in evidence.)

22 MR. NEAL: Your Honor, the government objects to
23 that as not evidence to be used but for the purposes that he
24 just used it but not as evidence in the case, that he admitted
25 making the statement and that's it, but it ends the matter.

1 MR. SCHIFFER: He admitted to the crime of
2 perjury in response to Mr. Hooker's question and we seek to
3 enter this and he swears that to his credibility, the physical
4 evidence he has identified and sworn to and admitted was
5 false.

6 THE COURT: Well, now, gentlemen, let's do not
7 argue the matter at this time. He admitted that this is
8 his signature on this statement and the statement has been
9 filed and accepted as an exhibit. Proceed with the examina-
10 tion.

11 MR. NEAL: May it please the Court, may the Court
12 instruct the jury that a statement given to a private attorney
13 by this man, Z. T. Osborn, of Nashville, is not perjury and
14 not the crime of perjury as Mr. Schiffer indicated.

15 THE COURT: Now, gentlemen, we are not going to
16 argue anything about perjury. That is not an appropriate
17 matter at this point at all. The witness has stated that
18 this was his signature and that is all.

1 MR. BRANSTETTER: May it please the Court, may
2 we request respectfully the Court to now instruct the jury
3 to disregard totally the statement of the U. S. Attorney
4 with reference to the perjury aspect because it is not true?

5 THE COURT: The Court will instruct the jury to
6 disregard the statement of both Mr. Schiffer and of Mr. Neal
7 in that respect. And instruct the witness to disregard it,
8 too.

9 MR. SCHIFFER: May we continue, your Honor?

10 THE COURT: Yes.

11 MR. SCHIFFER: Pardon me.

12 BY MR. SCHIFFER:

13 Q What number exhibit is this?

14 THE COURT: Exhibit No. 4.

15 Q With reference to the document, Exhibit No. 4,
16 which you have just identified your signature, you took an
17 oath from the notary public, did you not, at the time you
18 swore to this document?

19 A Yes.

20 Q And your answer is yes?

21 A Yes.

22 Q And so that we have the record abundantly clear,
23 you did tell Mr. Hooker in his examination of you a little
24 while ago that what you put in there you admit is false?

25 A That's right.

1 Q And you also admit that when you went before
2 the FBI on January 29, 1963, the statements you gave them
3 are false?

4 A That's right.

5 Q And with reference to the statement you gave
6 to the FBI you deliberately lied to them, is that what you
7 are saying now?

8 A Yes, sir.

9 Q And that when you took an oath you deliberately
10 told a falsehood under oath?

11 A Yes, sir.

12 Q With that intention to commit a falsehood? Is
13 that true?

14 A Yes, sir.

15 MR. SCHIFFER: I have no further questions of
16 this witness, your Honor.

17 THE COURT: All right. Any further examination?

18 MR. BERKE: The same thing for Defendant Hoffa
19 since we reserve any right to further cross-examination if
20 and when a time becomes appropriate if it should be so.

21 MR. BRANSTETTER: On behalf of the Defendant
22 Campbell we reserve further cross-examination and assume
23 that the instructions previously given the jury with
24 reference to consideration of evidence that does not relate
25 to other defendants, will be taken as to this witness also.

1 THE COURT: All right. Any further cross-
2 examination by any defendant? Or do all other defendants
3 reserve at this time? All right, is there anything further
4 from the government?

5 REDIRECT EXAMINATION

6 BY MR. HOOKER:

7 Q Carl, did you give the statement at Mr. Osborn's
8 office before or after the statement was made to the FBI?

9 A Before.

10 Q Before?

11 A Yes, sir.

12 Q Who called you to go down there?

13 A They called from his office, they called at
14 first from his office and then I wasn't there at the time.
15 And a representative of his came down.

16 Q What?

17 A Some man came down there and asked me could I
18 come up there to his office.

19 Q Do you know who the man was?

20 A No, sir, I don't.

21 Q Was the Defendant Parks there?

22 A No, sir.

23 Q And you say then it was after that that you
24 first talked to the FBI?

25 A Yes, sir, it was after.

1 Q Now, did you make--you made only one statement
2 to Osborn's office?

3 A Yes, sir.

4 Q And two statements to the FBI?

5 A Yes, sir.

6 Q Was the second statement to the FBI true or false?

7 A It was true.

8 Q It was true?

9 A Yes, sir.

10 Q After your meetings with the Defendant Parks,
11 did you tell anybody about your meetings with him?

12 A I told my mother.

13 Q Your mother, anyone else?

14 A I told my mother--

15 MR. SCHIFFER: (Interposing) Objected to, your
16 Honor, as to who he might have a conversation with, that
17 would be clearly hearsay.

18 MR. HOOKER: We have got a purpose in doing this.

19 THE COURT: Overruled.

20 BY MR. HOOKER:

21 Q You told your mother and who else?

22 A That is all, my mother, I discussed it with my
23 mother.

24 Q Did you ever discuss it with your sister?

25 A Oh, yes, my sister was present.

1 MR. SCHIFFER: Object, your Honor, that is a
2 leading question and should not be asked. Constantly Mr.
3 Hooker persists in leading these questions, asking these
4 leading questions. I want a fair trial, too, but we're
5 being deprived of it by Mr. Hooker deliberately cluttering
6 this record and testifying for the witness, your Honor.

7 THE COURT: Sustain the objection.

8 MR. SCHIFFER: We object.

9 THE COURT: Sustain the objection.

10 MR. HOOKER: Your Honor, I want to ask him, if
11 your Honor please, to direct his attention to a person he
12 discussed this with and I don't know of any other way to go
13 about it.

14 THE COURT: Just ask him if he talked to anybody
15 else about it.

16 BY MR. HOOKER:

17 Q Talked to your mother and anyone else?

18 A Talked to my mother and my sister was present.

19 MR. HOOKER: That is all.

20 RECROSS EXAMINATION

21 BY MR. SCHIFFER:

22 Q Despite what you talked to your mother--may I
23 address the witness from here, your Honor, to save time
24 going to the podium?

25 THE COURT: Yes, sir.

1 BY MR. SCHIFFER:

2 Q The first time you spoke with your father about
3 this entire subject matter, was on the 27th of March, 1963,
4 was it not?

5 A I don't remember the date.

6 Q It was long after the trial was over, wasn't it?

7 A Yes, it was after the trial was over.

8 Q And it was after you had been to Mr. Osborn's
9 office and took your oath and made that affidavit, is it not
10 so?

11 A Yes, sir.

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1 Q And it was after you had been visited for the
2 first time by the FBI, isn't that right?

3 A Yes.

4 Q May I just ask you one question in view of what
5 Mr. Hooker has asked you. In view of what Mr. Hooker has
6 asked you, the fact remains that you told falsehoods to the
7 FBI, and you lied under oath in your affidavit, that is the
8 truth, is it not?

9 A That is true.

10 MR. SCHIFFER: That is all.

11 THE COURT: All right, may this witness be
12 excused? All right, you may step down, Mr. Fields.

13 MR. BRANSTETTER: May it please the Court, this
14 witness is subject to being recalled.

15 THE COURT: Oh, yes.

16 MR. BRANSTETTER: And also would the Court instruct
17 him not to talk to anybody?

18 THE COURT: Mr. Fields, do not discuss your
19 testimony with anyone else. Remain available. Will you call
20 your next witness?

21 (Witness excused.)

22 MR. NEAL: Mrs. Mattie Leath. And she is Mrs.

23 MRS. MATTIE LEATH,

24 a witness called at the instance of the United States of
25 America, having first been duly sworn, was examined and

1 testified as follows:

2

DIRECT EXAMINATION

3 BY MR. NEAL:

4 Q Mrs. Leath, would you try to --

5 THE COURT: Mrs. Leath, if you will, please just
6 speak up loud enough so everyone in the courtroom can hear
7 you and everyone will want to hear what you may have to say.

8 BY MR. NEAL:

9 Q Mrs. Leath, would you try to face the members of
10 the jury and talk to them? Your full name is Mrs. Mattie
11 Leath?

12 A Yes.

13 Q And you are the daughter of Gratin Fields of
14 Nashville, Tennessee?

15 A Yes.

16 Q Where do you live, Mrs. Leath?

17 A 1806 Meharry Boulevard.

18 Q Do you live with your mother and father?

19 A Yes, I do.

20 Q I beg your pardon?

21 A Yes, I do.

22 Q Did you live with your father, Juror Gratin
23 Fields, when he was a juror in the Hoffa trial in 1962?

24 A Yes.

25 Q Where are you employed, please, Mrs. Leath?

1 A I work for the Wesley House Community Center in
2 Nashville, Tennessee.

3 Q The Wesley what?

4 A Wesley House Community Center.

5 Q Wesley House Community Center?

6 A Yes.

7 Q Do you have a Master's Degree in social work, I
8 believe, don't you?

9 A Yes.

10 Q And you do social work there at the community
11 center?

12 A Yes.

13 Q What is the name of that? Is there another name
14 for that community center?

15 A I work for one of the center of the organization,
16 it is the J. C. Napier Community Center.

17 Q J. C. Napier Community Center?

18 A Yes.

19 Q Now, directing your attention to late October or
20 early November at the commencement of the Hoffa trial in
21 Nashville, in 1962, did you have occasion to receive a tele-
22 phone call while you were at work?

23 A Yes, I did.

24 Q From whom was that call?

25 A From Jack Walker.

1 Q What did Jack Walker want or what did you talk
2 about over the phone with Jack Walker?

3 MR. BRANSTETTER: May it please the Court, we
4 are objecting to what Jack Walker may have said over the
5 phone. The Court has sustained this objection at least many
6 times before and counsel should not ask it.

7 MR. NEAL: May it please the Court, at this time
8 the government thinks this is admissible. Your Honor has
9 said if we wanted to pursue it further we would have an
10 opportunity. We would like to pursue it further. I think we
11 can demonstrate to the Court that Jack Walker was a relative
12 of Tom Parks. I have it in the record right here.

13 THE COURT: I will sustain the objection at this
14 time and before the witness leaves the stand we will permit
15 you to come back to that and take that up with the Court.

16 MR. NEAL: Your Honor, this witness' testimony
17 will concern primarily that. It will be no reason to go
18 further until that issue is disposed of.

19 THE COURT: Well, ladies and gentlemen, it will
20 be necessary to request then that you step out for a moment.

21 (Thereupon, the jury of twelve and four alternates
22 were excluded from the courtroom and the following proceedings
23 were had, to-wit:)

24 MR. BRANSTETTER: May it please the Court, may we
25 respectfully request the Court to have this witness also leave

1 and be directed not to discuss her testimony?

2 THE COURT: All right, please, Mrs. Leath, if you
3 will step off the stand. Do not discuss your testimony until
4 you are called back, please.

5 (Thereupon, the witness was excluded from the
6 courtroom.)

7 THE COURT: All right.

8 MR. NEAL: May it please the Court, I thought it
9 was recognized rule of law that any acts or acts done or
10 statements made by an agent within the scope of his agency
11 were admissible against his principal. Now, it is true, your
12 Honor, that the fact of an agency can't be created by the
13 agent's own statement. But we have created this agency, your
14 Honor, by the testimony of Walker that Parks had directed him
15 to do this. Now, that is not the agent's own declaration.
16 That is the testimony of someone as to the statements and the
17 agency, the statements made by Parks as to the agency.

18 Now, with respect to that, your Honor, I would
19 like to quote to you from three Am. Jur. 2nd, Section 353.
20 Testimony of agent. And I think this may be what is troubling
21 the Court.

22 "Although an agent's extrajudicial statements are
23 not admissible to prove the fact of the agency, the fact may
24 when it rests in parole be established on the trial by the
25 testimony of the agent himself. He is a competent witness to

1 prove the agency and his testimony cannot be restricted to
2 the mere words used by the principal but is admissible
3 generally on the whole subject of the existence of the agency
4 and the scope and extent of the authority conferred and
5 accordingly an agent is a competent witness as to his dealings
6 with another either to prove or disprove that he is or is not
7 that other's agent."

26a End
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1 Now, there is no question, Your Honor, that if
2 the witness Walker had told somebody, "I am the agent." He told
3 somebody out of the court, "I am the agent of Thomas Parks,
4 the Defendant Thomas Parks," that other third person
5 couldn't get in here and prove the existence of the agency
6 by Walker's statement, but if Walker took the stand, Your
7 Honor, and testified that Parks told him to call Mattie
8 Leath and told him to go out and see Mattie Leath and took
9 him out there in his car, Your Honor, and waited out in the
10 car while he was in there, there could be no clear example
11 of the testimony creating an agency.

12 Now, the cases, Your Honor, that hold that, if
13 there is any question about it, hold that the statements and
14 acts than of an agent are admissible against the principal
15 and are rather numerous. They are United States versus
16 Miller, 246 Fed. 2d 486 at Page 490, Second Circuit, 1957,
17 certiorari denied 355 U. S. 905, the year 1958.

18 Las Vegas Merchants and Plumbers Association versus
19 United States, 210 Fed. 2d 732, 751, certiorari denied 348
20 U. S. 817.

21 And I believe, Your Honor, that the other
22 conspiracy cases dealing with the admission of co-conspirators
23 and, as Your Honor pointed out, the co-conspiracy exception
24 to the hearsay rule is a limited application of the much
25 border principle of agency, the partnership.

1 Now, with respect to the testimony as to
2 establishing the agency, Your Honor, there was the testimony
3 this morning and there was also testimony yesterday at Page
4 1557 of the transcript, I am quoting the witness Walker,
5 "He came back a day or so later and asked me if I knew who
6 the boss of the Fields family was and was it Carl. I told
7 him I didn't think so and probably his sister. He asked what
8 her name was and I told him Mattie. And asked if I knew her.
9 I said, 'Yes.' And asked me to contact Mattie. I called
10 her on her job. She worked for the Housing Authority there
11 in Nashville.

12 "And I asked her did she remember me. She did.
13 I asked her if she would, what time she went to lunch. She
14 told me about twelve o'clock. I asked her could I come out.
15 Parks and I went to her place."

16 Further on down the same page 1557, "I went out
17 to the Housing Authority, J. C. Napier Courts, and met Mattie.
18 I went in. Parks carried me out there."

19 Further on at Page 1559, "Parks was outside in
20 the car."

21 Now, Your Honor, we don't contend--, we would
22 contend this, Your Honor, that these statements are clearly
23 admissible as against the Defendant Parks. Anything said in
24 that conversation between the witness Leath and Jack Walker
25 would be admissible immediately against the Defendant Parks

1 the agency has been established.

2 Now, Your Honor, if and when the government proves
3 that the Defendant Hoffa or the Defendant Campbell induced
4 Parks himself to effect the approach then they become
5 admissible against them because they become agents.

6 That is our proposition, Your Honor, at the
7 present time subject to connection up they are admissible,
8 but they are clearly at this point admissible without any
9 further connecting up as against the Defendant Parks because
10 the agency has clearly been established and these, the
11 conversation here over the phone and the subsequent con-
12 versation that the government proposes to get into out at the
13 J. C. Napier Community Center when the Defendant Parks is
14 waiting in the car, is admissible presently against the
15 defendant Parks, Your Honor.

16 THE COURT: All right.

17 MR. NEAL: Would Your Honor indulge me just a
18 moment?

19 THE COURT: Let's hear what the defendant has to
20 say and you may respond.

21 MR. NEAL: Very well, Your Honor.

22 MR. BRANSTETTER: May it please the Court, while
23 counsel is moving his books I might, as an aside, state that
24 for a goodly number of years I have taught a bar review
25 course in Nashville and Mr. Neal was in that course once and

1 I thought that he understood the law of evidence better than
2 he is trying to tell the Court at the present time.

3 MR. NEAL: Must have had a poor teacher.

4 MR. BRANSTETTER: I am not sure the teacher is
5 the motive.

6 May it please the Court, I think that there has
7 never been holdings in any federal or state courts in which
8 it can be asserted under this type of situation that you
9 can establish agency by the statements of the purported
10 agent.

11 THE COURT: Well, is that rule, Mr. Branstetter,
12 not just that you cannot establish agency by the extra
13 judicial statement, the hearsay statement of the agent, is
14 the agent not himself competent to come in and testify?

15 MR. BRANSTETTER: For example then, I think I
16 can answer it better by example. A goes to B and says to
17 B, "I am the agent for C."

18 THE COURT: No. For example, you sue a driver
19 of a truck, for example, in an automobile accident and he
20 comes into court and testifies that he works for the ABC
21 Trucking Company. Is that testimony not competent to establish
22 that he worked for the ABC Trucking Company?

23 MR. BRANSTETTER: It's not competent to show
24 that he was an agent acting in the scope that agency in the
25 absence of other testimony.

1 THE COURT: Do you have any authority for that?

2 Now, if he had made that statement out of court and someone
3 was coming in and quoting it in court then it becomes hearsay,
4 but is there anything to say that an agent cannot get on the
5 witness stand and testify about his employment?

6 MR. BRANSTETTER: He can testify as to employment
7 possibly but as the rule of agency has developed in this
8 type of situation I think the cases very clearly state
9 throughout that it is not truly a matter of principal and
10 agent in the first place in this type of situation, that it
11 must be an accessory, co-conspirator or some other sort of
12 an arrangement. There is no such thing as the law of agency
13 in criminal law as such.

14 The statements of one purporting to be an agent
15 or an accessory cannot be heard in court until such time
16 as the agency has otherwise prima facie been established.

17 Now, if we take that proposition and say that is
18 wrong first, that my proposition of law is wrong first, that
19 is, that you can establish agency in the method that Mr.
20 Neal is now suggesting, then it falls of its own weight
21 because Walker testified, at least on five occasions, I
22 believe I noted, that he was not an agent for Parks, specifically
23 he denied that he was conducting any manner of arrangement
24 as the agent Parks.

25 So, if we take his position he has not established

1 agency by the purported agent. If, on the other hand, he
2 is classified as a co-conspirator of some sort and not
3 indicted and not a party to this proceeding, then it also
4 falls of its own weight because a person who is acting as a
5 co-conspirator cannot by his own admissions bind his, we
6 will call him the principal or co-conspirator, until such
7 time as the conspiracy has been otherwise prima facie
8 established.

9 So on either view of the matter at this point in
10 the proceeding, whether we talk about agency as such and the
11 special type of agency that is involved in a criminal
12 proceeding, and technically there is none because it falls
13 back to the co-conspirator aspect, but if we take it on
14 the basis of agency alone he cannot establish it by having
15 the purported agent, one, say, "I am the agent", and then be
16 sufficient evidence to testify as to someone else testifying
17 as to what the purported agent said.

18 For example, the very question that the Court
19 put in the beginning can be put in the context of what we
20 are talking about. Walker is not now in court. A witness,
21 a third person, is now in court, and this third person is
22 saying that, "Walker said to me he is the agent for this '
23 person or calling for this person."

End Tk
27

Tk 28
follows

1 MR. BRANSTETTER: It is two steps removed from
2 any theory of agency in the criminal law. We think not only
3 is it two steps removed under any theory in the criminal law
4 but it would be a grave injustice, totally unjust, to have
5 the right hearsay statements of some person coming into the
6 court and saying that Jim Smith said so-and-so to me over
7 the phone and he is the agent of someone else who now happens
8 to be a defendant.

9 Now, may it please the Court, if the government's
10 case must stand or fall on the position that they now have
11 stated to the Court, then I don't believe that they could
12 establish a civil case in an automobile damage suit in that
13 type of proceeding. That is, they could not carry the
14 weight of the evidence, the simple preponderance of the
15 evidence, let alone evidence beyond a reasonable doubt and
16 they shouldn't be permitted to introduce evidence that is
17 highly incompetent, prejudicial, and unfair.

18 MR. NEAL: May it please the Court, I would
19 like to hand up this American Jurisprudence to your Honor.
20 It is just quite clear that your Honor is entirely right
21 when it says that the agent--

22 THE COURT: What do you say, though, about this
23 saying that it has no application in criminal law?

24 MR. NEAL: Your Honor, I will cite you three
25

1 cases where it says in hoc verbum.

2 MR. BRANSTETTER: I have--is it inappropriate
3 to interrupt?

4 MR. NEAL: Go ahead.

5 MR. BRANSTETTER: Suppose the driver in a
6 situation that your Honor created said, "But I'm not the
7 agent for this trucking company." That is what this man
8 Walker has said.

9 MR. HOOKER: That happens all the time, said I
10 was not on the man's business, was on my own business.

11 MR. BRANSTETTER: When he says that, then it is
12 not admissible to show agency, that is the point exactly.
13 You must establish it by other independent evidence. If I
14 might proceed just one step further and I apologize, but to
15 give another example. The Tennessee statute and I use this
16 by way of example and not to cite it as authority in this
17 court.

18 But the example that has been given by the Court
19 and by Mr. Hooker is this, that is the very reason that a
20 statute was passed in Tennessee to say that a license plate
21 registered in the name of a particular person was a prima
22 facie evidence that the automobile was owned and being
23 operated in the course of employment of the person in whose
24 name it was registered is the cause of the very point of
25 law we are now talking about.

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End Tk 28
Tk 28A fls.

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The person could not get on the stand and testify that he was the agent. There had to be independent evidence other than the statements of the purported agent or servant.

MR. NEAL: Your Honor, if the principal agency theory of evidence didn't apply in criminal law you could have no co-conspirator conception because your Honor just clearly pointed out that the whole basis of the hearsay rule is one of agency, partnership. The law is absolutely full and I just cite these cases and they say it plainly.

1 United States versus Miller, 246 F 2d 486. Las
2 Vegas Merchants and Plumbers Association versus United
3 States, 210 Fed. 2d 732 and 751. Certiorari denied in
4 both cases. Those cases plainly say, Your Honor.

5 Let me give you another case right on point with
6 respect to the admissibility of this, a Sixth Circuit case.

7 I beg your pardon. I beg your pardon, Your Honor,
8 Fourth Circuit case. Hicks versus United States, 173 F 2d
9 570.

10 THE COURT: Page 57?

11 MR. NEAL: 570, Your Honor. Obstruction of
12 justice case. The law establishes, I'm quoting, Your Honor.

13 "The evidence establishes that appellant, that
14 is number one person involved, an attorney at law approached
15 Martin, a filling station operator, and told the latter,
16 now, that is the second person, that he wished to see one
17 of the jurors serving in the trial of the Rakes case to see
18 if he would hang the jury. That he asked Martin to see the
19 juror and see if he could not arrange for appellant to see
20 him. That Martin endeavored to carry out this commission.
21 This was clearly sufficient to justify the conviction of
22 appellant and there can be no question but that the evidence
23 as to what occurred between Martin and the juror was properly
24 admitted."

25 Why, Your Honor, that is just an example of the

1 agency theory involved. And there is another reason on
2 admissibility of this, Your Honor, if not agency involved,
3 this is part of the commission of the offense in which all
4 were involved.

5 But if Your Honor will refer to United States
6 versus Miller and Las Vegas and all the plethora of cases
7 involving the conspiracy, you will see that there are a whole
8 number of conspiracy cases involving conspiracy and agency.

9 If you have someone to act on your behalf, you
10 are responsible for what he does in criminal law as well as
11 in civil law and the whole basis of the co-conspirator
12 conception is based on that principle and these cases just
13 apply it strictly.

14 Now, here is the citation, Your Honor, here is a
15 quotation if Your Honor would like, "the rule of criminal
16 agency although not as broad as in civil cases applies in
17 criminal cases. If there is sufficient evidence and the
18 jury concludes that the acts of the agent were done with
19 appellant's authority and under their direction the agent's
20 acts bind the appellant as principal."

21 We cite again, Your Honor, Hicks and the Las Vegas
22 and the Miller cases.

23 MR. BRANSTETTER: May it please the Court, I
24 believe counsel's own quotation refutes his contention. I
25 haven't read the case, but the head note that was read from

28A-3 .

1789

End Tk
28 A

Tk 28 B
follows

1 says that once the agency is established what is the scope
2 of Walker's agency?
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1 THE COURT: Can I suggest this, gentlemen, can you
2 proceed with some other matter and give the Court an opportuni-
3 ty to review these cases? Or do you wish --

4 MR. NEAL: (Interposing) Your Honor, we can't
5 until we have this whole witness' testimony.

6 THE COURT: Is there anything further? The Court
7 will desire to take a brief recess.

8 MR. BRANSTETTER: Could I say this, may it please
9 the Court, since the Court is going to look at it, agency
10 must be established in some manner. Secondly, the scope of
11 that agency must be established in some manner. Now, I ask
12 the Court, one, what and how was the agency established?

13 Two, what is the extent of the scope of the agency?

14 MR. NEAL: The case, your Honor, may I give you
15 American Jurisprudence 2nd where the citation was? May I
16 point out to your Honor the government has submitted to the
17 Court a memorandum on this point? I think the cases we have
18 cited are in that.

19 MR. SILETS: Before your Honor retires, I am
20 somewhat amazed at counsel for the government. I'm looking
21 now at the Hicks case and he didn't read the full quotation
22 to your Honor. He stopped one sentence short. It seems that
23 there, if the Court were to read the Hicks case, the per
24 curiam decision of the Fourth Circuit, the important phrase,
25 the important sentence, is what Mr. Neal didn't read.

1 It was the fact that the conversation with the
2 juror took place and not the truth or falsity of what was said
3 in the course of it which was material to the charges under
4 investigation.

5 It is patently obvious that it was admitted
6 exclusively to establish the fact of the statement being made
7 to the juror, not as we are getting into here to prove the
8 truth of what was said between Walker and this woman.

9 MR. NEAL: Your Honor, this is equally an
10 improper approach with the lady involved on the stand. The
11 Hicks case is perfectly applicable but we don't have to
12 rely on the Hicks case, go to Miller and the other cases we
13 cited.

14 MR. BRANSTETTER: One further question, may it
15 please the Court, may an agent deny agency and the government
16 then assert that he is an agent nonetheless? I think that is
17 the question.

18 MR. NEAL: Yes, your Honor, let me say something
19 in referring to that. The statement Walker made that he was
20 not the agent is a legal conclusion on his part. He states
21 and if your Honor will remember this morning's testimony and
22 will look at page 1557 of yesterday's testimony and page 1559
23 of yesterday's testimony, he sets up his authority why he
24 called Mattie Leath and why he went out there and who took
25 him out there and those are the basic historical facts and not

1 his legal conclusion as to whether he was or was not an
2 agent. It is one of those complicated questions of law.

3 MR. SCHIFFER: Your Honor, may we just say on
4 behalf of Mr. Parks, Defendant Parks, Mr. Neal's argument
5 raises no issue nominally in this sense.

6 We seem to be overlooking the fact that every
7 criminal statute needs a strict construction and that is a
8 matter of law. What they are trying to do is expand the
9 theory now of civil agency and they are saying this that they
10 can convict the defendant by having the opportunity of putting
11 someone on the stand who they say in their opinion is an
12 agent for someone else, but when their very party on whom they
13 must rely to prove the agency himself on the witness stand
14 says, "I am not an agent, I never had an intention of being
15 an agent, and was no such thing as agency, I never acted for
16 anyone else," they want to say, now that their own witness
17 that they are not bound by those remarks but now they can take
18 just the opposite version of what their own witness says and
19 now say doesn't that prove an agency?

28B end
28C fls

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1 Which brings us back to our original proposition,
2 Your Honor, that all the evidence they have put on up to
3 this time until they can actually prove an agency by someone
4 who will get up on the stand and say there is an agency and
5 that I was an agent, up to that point none of this evidence
6 here is admissible. And we fall now to the advice of Mr.
7 Walker taking the stand and saying I'm not an agent but the
8 government said, oh, yes, you are, when there is nothing in
9 the evidence to show it.

10 THE COURT: Are you contending that none of the
11 evidence submitted so far is admissible as to your client,
12 Mr. Parks?

13 MR. SCHIFFER: Yes, sir, none of the evidence that
14 has been shown up to this time even remotely connected him
15 with the conspiracy.

16 THE COURT: What does a conspiracy or agency have
17 to do at all so far as your client is concerned with regard
18 to the testimony?

19 MR. SCHIFFER: Well, if we take the witnesses
20 one by one--

21 THE COURT: Well, in his testimony about Mr. Parks?

22 MR. SCHIFFER: About Mr. Parks you will find this,
23 Your Honor, that thus far the anatomy of the case is this in-
24 sofar as Mr. Parks is concerned, any statements that are
25 made concerning Mr. Parks first they are made at a period

1 when it must be admitted as a matter of law the conspiracy
2 is over.

3 THE COURT: What does the conspiracy have to do
4 with his case? He is charged with a substantive offense?

5 MR. SCHIFFER: He is charged with a substantive
6 offense, but if we read the count, Your Honor, there must be
7 all the elements which the government has inserted in count
8 number three. I would like to read that phrase and unless the
9 government can meet its own charge against this defendant--

10 THE COURT: I think perhaps we are getting off
11 the issue. I didn't mean to get off the issue. I'm
12 responsible for doing that. Let's come back to the question
13 of the admissibility of the statements of this witness, Mrs.
14 Leath, as to what Mr. Walker may have said.

15 MR. SCHIFFER: All right, sir. Mr. Walker who
16 the government says he is an agent. Well, Mr. Walker himself
17 says I'm not an agent. And he has testified as their agent
18 and he said there wasn't an agency and so how can the
19 government come around now on a strict construction of
20 criminal statute and say, yes, he is, even though he tells us
21 he is under oath, we say he is. What kind of evidence is
22 that to bring as to a criminal case and what kind of a
23 construction of their own testimony is it to use that against
24 what their own witness has said, use it against his testimony,
25 whom he must have the strict construction rule.

28c-3 .

1795

1 THE COURT: All right, let's take about a five
2 minute recess.

3 (Thereupon, at 3:25 o'clock p. m., Court was in
4 recess.)

End Tk 28c 5

Tk 29
follows 7

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1 THE COURT: All right. Gentlemen, I am going
2 to overrule the objection but admit this testimony only to
3 the Defendant Parks and with appropriate instructions to the
4 jury in that respect. It will not be admitted to any other
5 defendant.

6 MR. SILETS: Your Honor, this raises a very
7 delicate point as to all of the defendants. This jury is
8 being inundated by evidence relating to persons other than,
9 for example, in my situation, other than Mr. Dorfman or
10 other than Mr. Tweel or other than Mr. King, and this is
11 going to proceed on and no matter what kind of cautionary
12 instructions this Court gives they cannot help but be pre-
13 judiced against these respective persons.

14 I move that again, and I'd like the Court to
15 reflect this as being a standing objection to this, for a
16 severance because my position that no cautionary instruction
17 can be sufficient, but if the Court denies my motion for
18 severance I think the Court should on each specific occasion
19 rather than have it as a standing instruction at the begin-
20 ning of the week or at the beginning of the trial, on each
21 specific occasion the Court should instruct the jury that
22 the evidence is not admissible against Mr. Dorfman, but first
23 my motion is for a severance.

24 THE COURT: Allow the motion for severance to
25 be overruled. With reference to any specific--

1 THE COURT: All right. Gentlemen, I am going
2 to overrule the objection but admit this testimony only to
3 the Defendant Parks and with appropriate instructions to the
4 jury in that respect. It will not be admitted to any other
5 defendant.

6 MR. SILETS: Your Honor, this raises a very
7 delicate point as to all of the defendants. This jury is
8 being inundated by evidence relating to persons other than,
9 for example, in my situation, other than Mr. Dorfman or
10 other than Mr. Tweel or other than Mr. King, and this is
11 going to proceed on and no matter what kind of cautionary
12 instructions this Court gives they cannot help but be pre-
13 judiced against these respective persons.

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15 reflect this as being a standing objection to this, for a
16 severance because my position that no cautionary instruction
17 can be sufficient, but if the Court denies my motion for
18 severance I think the Court should on each specific occasion
19 rather than have it as a standing instruction at the begin-
20 ning of the week or at the beginning of the trial, on each
21 specific occasion the Court should instruct the jury that
22 the evidence is not admissible against Mr. Dorfman, but first
23 my motion is for a severance.

24 THE COURT: Allow the motion for severance to
25 be overruled. With reference to any specific--

1 MR. BRANSTETTER: Your Honor.

2 THE COURT: Allow the motion to sever on behalf
3 of the other defendants and also allow a motion on behalf of
4 all of the defendants with regard to the request for instruc-
5 tions--but with respect to the request for instructions,
6 these matters will just have to be taken up. I know no way
7 of taking them up in blank or in advance and they would have
8 to be taken up as testimony is sought to be introduced which
9 is believed to be inadmissible.

10 Do you have any suggestion how I might handle it
11 otherwise, Mr. Silets?

12 MR. SILETS: Well, your Honor, technically as
13 each statement is being made it would seem that an instruction
14 should be given and, of course, this is the purparty of
15 this kind of a trial where you have so many defendants that
16 if it is being offered against Mr. Parks and you have other
17 defendants getting up and asking each statement be stated
18 to the jury as not being held against the particular
19 defendant, I don't know what short of that can be done.
20 This is the problem because as each statement is being made
21 its prejudicial effect is being felt unless the Court cautions
22 the jury at that time.

23 THE COURT: Well, I will attempt to cover that.
24 If I do not cover it to the satisfaction of counsel, why,
25 advise the Court.

1 MR. BRANSTETTER: May it please the Court, in
2 order that the record will be very clear the motion for
3 severance that the Defendant Campbell makes, in addition to
4 the statements made by Mr. Silets, also includes not only
5 the severance of counts but the severance of the Defendant
6 Campbell's case from the other two defendants listed in
7 Count 3.

8 THE COURT: All right.

9 MR. NEAL: Your Honor, with respect to those
10 instructions the government does object to the continual
11 instructing. Of course, if the Court thinks that is neces-
12 sary the government wants all due process as it is as
13 interested as the Court but the government thinks that the
14 continual instructing of the jury may give the jury the
15 wrong impression, your Honor.

16 Your Honor has instructed, it has instructed
17 twice, even though the second time went through the instruc-
18 tions to clarify the transcript, but the jury, as your Honor
19 said this morning, the transcript didn't pick up what you
20 instructed yesterday, so you went over it again this morning.

21 Continual instructions, your Honor, is somewhat,
22 I think, insulting to the jury that they can't do all of this.
23 They know who is testifying and what is being said and your
24 Honor has instructed them carefully each time. We do
25 respectfully object to the continual instructions.

1 Now, with our other comment on that, your Honor,
2 is this, it's true, and as I said in the beginning, very
3 candidly, that this testimony of Mattie Leath will at this
4 time be connected up only to the Defendant Parks but we
5 expect to connect this up to the other defendants and I would
6 request that your Honor not foreclose that possibility,
7 certainly if and when we prove that the Defendant Campbell
8 and the Defendant Hoffa was inducing Parks to so act, then
9 you have got the agency, the theory of principal-agent and
10 co-conspirators.

11 THE COURT: Let's cross one bridge at a time.
12 We are not at that bridge at this time and the Court is
13 going to admit it only as to the Defendant Parks and then
14 only with what the Court believes to be appropriate instruc-
15 tion.

16 MR. NEAL: Could your Honor say unless it is
17 connected up to the other defendants, in other words, if
18 you say it is admitted only as to them then there is no
19 qualifications on this thing unless and until it's connected
20 up with the others and we certainly have a right to connect
21 it up, all of this.

22 THE COURT: Until such time as you feel that you
23 have connected it up and wish to request an additional or
24 further instruction the Court will consider that. At this
25 time I think what the Court is doing is proper.

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MR. NEAL: Very well, your Honor.

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3 Tk 29
Tk 30 fls.

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MR. BRANSTETTER: The government said they were interested in due process as much as the Court. I would like to suggest that the Court has evidenced far more interest in due process than has government counsel.

THE COURT: Of course, the parties are adversaries in the case and the Court recognizes that. Let's have the jury returned and the witness returned and this book may be returned to counsel.

MR. NEAL: Incidentally, I hope the Court won't hold it against me that Mr. Branstetter was my instructor.

1 (Thereupon, the jury of twelve and four alternates
2 were brought into the courtroom.)

3 (Thereupon, the witness, Mrs. Mattie Leath,
4 was brought into the courtroom, and the following proceedings
5 were had, to-wit:)

6 THE COURT: Now, ladies and gentlemen, we inter-
7 rupted the examination of this witness at a point where she
8 was -- where a question was directed to her in regard to any
9 conversation that she may have had with Mr. -- what is Mr.
10 Walker's full name?

11 MR. HOOKER: James T. Walker.

12 MR. NEAL: Jack Walker.

13 THE COURT: James T. Walker. In connection with
14 any testimony that the witness may give as to any statement
15 of Mr. Walker, I wish to refer again to the instructions
16 which I gave you this morning concerning the situation in
17 which evidence may be admissible as to some but less than all
18 of the defendants. So, bearing those instructions in mind,
19 I would instruct you further that if the jury believes from
20 evidence in the record other than hearsay statements, here
21 sought to be introduced, or hearsay statements heretofore
22 introduced, that an agency or a conspiracy existed between
23 the Witness Walker and the defendant Mr. Parks, then the state-
24 ments of Mr. Walker to this witness, Mrs. Leath, may be con-
25 sidered by the jury as to the defendant Mr. Parks but only as

1 to the defendant Mr. Parks and not as to any other defendant.

2 They will not be considered as to the Defendant
3 Parks, however, unless the jury finds from other evidence
4 in the case, excluding hearsay statements attributed to the
5 Defendant Parks, that Walker either was an agent of Mr. Parks
6 at the time the statements were made or was acting at the time
7 in the scope -- and was acting at the time in the scope and
8 course of the agency.

9 Or, two, that Walker was a party to a conspiracy
10 with Parks. And that the statements attributed to Mr. Walker
11 were made in furtherance of this conspiracy and at a time
12 when the conspiracy was in effect. All right.

13 BY MR. NEAL:

14 Q Mrs. Leath, you testified, I believe, that you
15 are a daughter of Juror Gratin Fields and that during the
16 Hoffa trial in Nashville in the fall of 1962 you lived with
17 your mother and father, Gratin and Mrs. Fields?

18 A That's right.

19 Q And that you had a Master's Degree in social
20 work and that you are employed, were employed, in the fall
21 of 1962 at the J. C. Napier Community Center?

22 A That's right.

23 Q Now, I had asked you when the jury was excused,
24 I had asked you if you had received a call the latter part of
25 October or the early part of November, of 1962, during the

30 - 3

Leath - Direct

1803

1 early part of the Hoffa trial from a man named Jack Walke?

30 End
30A fls

2 A Yes, I did.

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1 Q And would you tell us what Mr. Walker said to
2 you during that occasion during that telephone call?

3 A Well, when he called he identified himself. I
4 didn't remember who he was. I had known Jack earlier but I
5 didn't remember who he was when he called. So he said, "If
6 you see me you will know me. You will remember me." And
7 he asked if he could come out and talk with me. And I asked
8 him about what. I told him I was on the job and I didn't
9 have time to talk. He said, "Well, how about letting me
10 take you to lunch and we can talk there?" I said, "Well,
11 I very seldom go out to lunch. I usually have lunch here
12 at the office." I said, "You may come out and talk with me
13 there if you like." So, shortly after that he did come out.

14 Q He came to your office?

15 A Yes, he did.

16 Q Was this the same day of the telephone call?

17 A Yes.

18 Q He had called you in the morning and made
19 arrangements to meet at your place for lunch?

20 A Yes.

21 Q Or during your lunch hour and he came on out?

22 A Yes.

23 MR. BRANSTETTER: May it please the Court, could
24 we respectfully request that we have some designation as to
25 time? Otherwise it would not fit into any of the instructions

1 the Court gave.

2 BY MR. NEAL:

3 Q Would you tell us approximately what time of the
4 year this was? It was in 1962, was it?

5 A Yes.

6 Q Would you tell us the approximate period?

7 A As best I can remember it was between the latter
8 part of October and between the first and the middle of
9 November.

10 Q Was the Hoffa trial in progress?

11 A Yes.

12 Q And your father was on the jury?

13 A Yes.

14 Q Now, when Mr. Walker--this is Jack Walker, by
15 the way, isn't he?

16 A Yes.

17 Q And he is the man who was a patrolman in Nashville?

18 A Yes.

19 Q When he came in, would you tell us what Mr. Walker
20 said to you at that time?

21 A Well, when he came in, I did recognize him and
22 remembered that I knew him. And we made small talk. We
23 talked about he asked about my family. And he asked if my
24 dad worked for the railroad. And I told him, no, he had
25 retired. He said he used to work for the railroad. I said,

30A - 3

Leath - Direct

1806

1 "Yes." And he asked me if I would like to do some work. In
2 the meantime, he asked me over the phone something about work
3 when I asked him what was he doing now. He said he was in
4 the printing business or something, and that he needed--he
5 was looking for someone to do some typing for him. So when
6 he came to the office I thought this is what he was referring
7 to. So I asked him about the job.

End Tk 30A
Tk 30 B fls.

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1 Q He said he had a little job for you?

2 A Yes. And this is what I thought he was referring
3 to, the secretarial work. So I told him I had a job and it
4 was as much as I could take care of. I wasn't interested in
5 any more work. He said, no, that is not what he had in mind.
6 That he wanted me to tell him what my father was wearing each
7 morning when he went to court. And I asked him why would he
8 want to know because this seemed to me that he was trying to
9 jeopardize my father in some kind of way.

10 Q You thought he was trying to jeopardize your
11 father in some kind of way?

12 A That is what I told him.

13 Q What did he do then?

14 A He said, "Well, it is a fellow out in the car
15 who wants to know."

16 MR. SCHIFFER: Objected to, your Honor, at this
17 point. Now, this is sheer hearsay. It is not said in the
18 presence of the Defendant Parks.

19 THE COURT: Overrule the objection.

20 BY MR. NEAL:

21 Q He said there was a fellow out in the car who
22 wanted to know?

23 A Yes, he just said a fellow out in the car who
24 wanted to know.

25 Q What happened then?

1 A Well, I told him that I didn't mess with the
2 government in any kind of way and if anyone should contact
3 me concerning that that I would call the police.

4 Q Now, during this conversation did he ask you if
5 Carl had talked to you about meeting Parks, meeting a man
6 named Parks?

7 A Repeat the question?

8 Q I said, when Jack was in your office during lunch,
9 did he mention to you or ask you about Carl, your brother Carl
10 Fields?

11 MR. BRANSTETTER: May it please the Court, this
12 is leading.

13 MR. SCHIFFER: Not only leading, but rank hearsay.

14 THE COURT: Sustained.

15 BY MR. NEAL:

16 Q Did you have any conversation with respect to
17 your brother, Carl Fields?

18 A Not that I can remember.

19 Q Not that you can remember?

20 A No.

21 Q Well, would it refresh your recollection any to
22 question whether he mentioned to you had your brother Carl
23 talked to you or any?

24 A Oh, he did.

25 MR. SCHIFFER: Objection, your Honor. Hearsay.

1 MR. NEAL: Just refreshing the witness' recollec-
2 tion.

3 MR. SCHIFFER: He can't do it this way.

4 MR. NEAL: May it please the Court, you can
5 certainly direct the witness in a line of conversation if
6 her recollection has been refreshed.

7 THE COURT: Ask her anything about if she had
8 any further conversation.

9 BY MR. NEAL:

10 Q Did you have any further conversation with respect
11 to your brother, Carl Fields?

12 A Any further conversation?

13 Q About your brother with Jack Walker?

14 A He did ask me if Carl had talked with me.

15 Q If Carl had talked with you?

16 A Yes.

17 Q Had Carl talked with you?

18 A No, he hadn't.

19 Q Had he --

20 A (Interposing) At that time had he talked --

21 MR. SCHIFFER: (Interposing) Objected to, your
22 Honor, the answer is he hadn't talked with her.

23 THE COURT: Sustain the objection.

24 MR. NEAL: Very well.

25 BY MR. NEAL:

30B - 4 . Leath - Direct

1810

1 Q All right, when you told Mr. Walker that you did
2 not want to become involved with the government and thought
3 you were trying to jeopardize your father, what happened?

30B End
31 fls

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1 A Well, he changed the conversation and told me
2 that--

3 MR. BRANSTETTER: (Interposing) I object.

4 MR. HAGGERTY: I object to the form of the question.
5 It's predicated on a false premise entirely. I ask to have
6 the question read. Your Honor readily sees there is no such
7 testimony as that.

8 THE COURT: All right. I must have missed the
9 question. Could you either re-state it or have the reporter
10 read it?

11 MR. NEAL: Yes. I said after she had said that
12 she didn't want to jeopardize her father.

13 MR. HAGGERTY: There is no such--

14 MR. NEAL: (Interposing) What happened?

15 MR. HAGGERTY: Wait a minute. There is no
16 testimony about not wanting to jeopardize her father in the
17 record up to this time.

18 MR. NEAL: I distinctly remember something about
19 that. I ask the record be read back.

20 THE COURT: Just let's state your question and let
21 the Court rule.

22 MR. NEAL: Very well.

23 BY MR. NEAL:

24 Q What happened then, if anything?

25 MR. SCHIFFER: Well, Your Honor, I object to it.

1 I ask the jury be instructed to disregard the statement made
2 by the prosecutor, his last question, because he was quoting
3 something allegedly from this record but which does not appear
4 in this record and made a point across to the jury and put
5 words in the mouth of this witness which the witness never
6 testified to.

7 THE COURT: Well, of course, ladies and gentlemen,
8 the jury will decide the case on the basis of the testimony
9 of the witnesses.

10 BY MR. NEAL:

11 Q Mrs. Leath, had you said anything previous to this
12 uttering the words "jeopardize your father"?

13 A Yes, sir, I did.

14 Q In your testimony just now?

15 A Yes, I did.

16 Q Thank you. I didn't mean to misquote the record,
17 I didn't think I did. Now, what happened then?

18 A Well, after I had made the remark that if anyone
19 should contact me in this regard that I would call the police,
20 Jack changed the subject and left shortly.

21 Q Did you, when he left your office, did you go to
22 the window or anything?

23 A I did.

24 Q And what did you see outside?

25 A I saw a car.

- 1 Q Did you see Walker?
- 2 A Did I see Walker?
- 3 Q Did you see Jack Walker outside?
- 4 A Yes.
- 5 Q What did he do?
- 6 A He got in the car.
- 7 Q Did you see the car itself?
- 8 A Yes.
- 9 Q That he got into?
- 10 A Yes.
- 11 Q What kind of a car was it, Mrs. Heath?
- 12 A Well, as I remember, I believe it was a two-tone
- 13 car and I believe it was a green.
- 14 Q And what make was it?
- 15 A I believe it was a Buick.
- 16 Q What approximate year?
- 17 A I really can't tell you.
- 18 Q Well, let me show you Government's Exhibit 3 and
- 19 ask you if it was a car similar to that Jack Walker got into
- 20 outside?
- 21 A Yes.
- 22 Q A similar car like that, maybe not the exact car,
- 23 but similar to that?
- 24 A Yes, it looked to me like it was made like this.
- 25 Q Thank you, marshal. Now, was there any--, did

1 you observe anyone else in that car that Jack got in?

2 A There was someone sitting behind the steering
3 wheel.

4 Q Well, could you observe any features on him?

5 A No, I cannot say whether it was a man or woman
6 or child.

7 Q I see. Now, Mrs. Leath, did Carl ever tell you
8 about his conversation or any conversation he had with Parks
9 at any time?

10 A Yes.

11 Q When did he tell you that?

12 MR. SCHIFFER: Objected to, Your Honor, as not
13 in the presence of the defendant.

14 THE COURT: Well.

15 MR. NEAL: Your Honor, they brought out some alleged
16 prior inconsistent statements. I'm entitled to ask if he
17 made any prior consistent statements.

18 MR. SCHIFFER: We haven't yet reached cross
19 examination. He said he brought out nothing.

20 THE COURT: Sustain the objection except as to the
21 existence or non-existence of the conversation.

22 MR. NEAL: Your Honor, what I want to bring out by
23 the witness that prior to any--

24 MR. HAGGERTY: (Interposing) Well, I object.

25 MR. NEAL: I don't want to talk in front of the

1 jury but I do think I am not making my point clear. I will go
2 ahead with it if Your Honor--

3 THE COURT: (Interposing) I will permit you to
4 examine only as to the existence or non-existence of the
5 conversation, not as to the content of any conversation.

6 BY MR. NEAL:

7 Q Did you have a conversation with your brother,
8 Carl Fields?

9 A We talked about it, yes.

10 Q And when was that?

11 A Well, I don't--

12 Q (Interposing) The first time?

13 A It was during this, this same period, I mean this
14 period between October and the middle of November, I cannot
15 remember the dates.

16 Q I see. Was it prior to the end of the Hoffa
17 trial? The Hoffa trial ended, I think it's a matter of
18 record now, the Hoffa trial ended in December of 1962, the
19 latter part of December.

20 A Was it prior to that?

21 Q Yes.

22 A Yes.

23 Q It was prior to that you had a conversation with
24 Carl Fields?

25 A Yes.

1 MR. NEAL: Your Honor, I believe at this time I
2 am entitled to bring out what Carl Fields told her and I
3 would point out to the court that when Carl Fields was on
4 the stand and testified in the manner he did that defense
5 counsel brought out certain statements they alleged to be
6 prior inconsistent statements. Now, I have established--

7 MR. BERKE: (Interposing) I don't think, Your
8 Honor, this should be in the presence of the jury, if Your
9 Honor please, we think he is arguing his case and he is
10 arguing his points and--

11 THE COURT: (Interposing) All right. Just a
12 minute, gentlemen. I am going to sustain the objection at
13 this time. You may raise the issue again after the Court has
14 had an opportunity to study the record.

15 MR. NEAL: Your Honor, I certainly apologize for
16 taking time but I don't want to have the witness back.

17 THE COURT: Well, there is going to have to be a
18 cross examination of the witness.

19 MR. NEAL: Oh, I see, I see. Then I would like
20 another opportunity to question with respect to that.

21 THE COURT: All right, sir.

22 MR. NEAL: You may examine.

23 MR. SCHIFFER: Would Your Honor care to take up
24 the matter of argument?

25 THE COURT: Beg your pardon?

1 MR. SCHIFFER: Would Your Honor prefer to take up
2 the matter of argument now?

3 THE COURT: No, I would rather proceed, if you are
4 ready to proceed, at any rate with a portion of the examination.

5 MR. SCHIFFER: May I ask a question, there's only
6 one or two questions, Your Honor, I will save time rather
7 than go to the rostrum?

8 THE COURT: All right.

9 CROSS EXAMINATION

10 BY MR. SCHIFFER:

11 Q Mrs. Leath, do you know the Defendant Tom Parks?

12 A I do not.

13 Q Would you recognize him if you saw him?

14 A I believe I would only from his picture in the
15 paper and TV.

16 Q I see. Only from the description of the paper or
17 TV?

18 A That's right.

19 Q Otherwise you would not recognize him?

20 A No, I don't think I would.

21 MR. SCHIFFER: All right, thank you very much.

22 THE COURT: All right. Yes, sir.

23 MR. BRANSTETTER: I would like to suggest that
24 insofar as the Defendant Campbell is concerned that there is
25 no cross examination and that the instruction that has been

1 previously been given to the jury I think suffices on the
2 point involved.

3 I would state this if the Court is going to take
4 up a question of the prior consistent statement that I
5 believe the rule of law there dealing with the prior
6 consistent statement is this, that only when a witness is on
7 the stand and that witness has been accused of a recent
8 fabrication, then may a prior consistent statement be shown,
9 so I submit counsel hasn't met that rule.

10 MR. NEAL: Would Your Honor wish me--

11 THE COURT: (Interposing) Do you have some
12 authority? Can you pass the authority to the bench?

13 Ladies and gentlemen, there was a very distinguished
14 law professor by the name of Wigmore, he lived, I believe, to
15 be more than 90 years of age, who was a very versatile man.
16 He wrote, among other things, a many volumned text upon the
17 law of evidence and this Court has not mastered that volume
18 or those volumes. I suppose if I live to be 90 I shan't but
19 we try to do the best we can as we go along and take up each
20 problem.

End Tk
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Tk 31A
follows

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1 MR. NEAL: May it please the Court, I do have
2 some authority. I can hand it up to the Court. I believe
3 that I could give the Court the citation, either way the
4 Court would prefer. I would like to state the reason.

5 THE COURT: Well, I would rather not have to
6 excuse the jury, but I don't think that these matters, these
7 questions of law, should be argued in the presence of the
8 jury. They are not matters that address themselves to the
9 jury in any respect and, therefore, I would prefer, if you
10 can, pass it up. If you can't, we will just have to pass the
11 matter until in the morning and let the Court rule on it.

12 MR. NEAL: I can pass it up, your Honor.

13 THE COURT: All right.

14 MR. NEAL: It may take the Court somewhat longer
15 to read it.

16 THE COURT: I believe I will sustain the objec-
17 tion.

18 MR. NEAL: Your Honor, it's almost that time of
19 day. May the jury be excused so I could make a short state-
20 ment to the Court on that?

21 THE COURT: All right.

22 MR. NEAL: I think what I am going to say would --

23 THE COURT: (Interposing) Is there any further
24 examination of this witness other than on that matter?

25 MR. NEAL: No, sir.

1 THE COURT: Well, ladies and gentlemen, we do
2 have further matters that we have to take up here this
3 evening, so that at this time I will excuse the jury for
4 today.

5 Remember the instructions that I have given you.
6 Do not talk about the case among yourselves or allow others
7 to talk with you. Court is not adjourned at this time.
8 All right.

9 (Thereupon, the jury of twelve and four alternates
10 were excluded from the courtroom and the following proceedings
11 were had, to-wit:)

12 THE COURT: All right, now, then, in the absence
13 of the jury -- just a moment, Mrs. Heath -- I will allow you
14 to question the witness and have that matter in the record
15 and then give the Court an opportunity to pass upon its
16 admissibility.

17 MR. NEAL: Yes, your Honor. May I state the
18 purpose of this right now? The Witness Fields made -- gave
19 his testimony.

End 31A
32 fls

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1 MR. NEAL: Defense counsel introduced certain
2 statements he made inconsistent with that.

3 MR. SILETS: Your Honor, excuse me, I hate to
4 interrupt Mr. Neal, but if he is going to try to elicit from
5 this witness certain statements which will corroborate
6 somebody else, I prefer that he do it outside of the presence-

7 THE COURT: Well, let's have the witness examined
8 and then I will hear any arguments you wish to make.

9 BY MR. NEAL:

10 Q Mrs. Leath, did Mr. Carl Fields, your brother,
11 ever discuss with you anything about Thomas Ewing Parks?

12 A When you say with me, do you mean with me alone
13 or--

14 Q With you in the presence of anyone else?

15 A Yes.

16 Q Did he tell you that he had been approached by
17 Thomas Ewing Parks?

18 A Yes.

19 MR. HAGGERTY: Just a moment, while probably as
20 a separate record I think the question is leading.

21 MR. NEAL: It is leading. This is a college-educated
22 lady. I'm not going to be able to put words in her mouth.

23 THE COURT: It might be appropriate to read this
24 to the jury if it is admissible.

25 MR. SCHIFFER: Your Honor, I understand that Your

1 Honor is taking this conditionally to find out whether it is
2 correct?

3 THE COURT: Yes, sir.

4 MR. SCHIFFER: We are reserving objections.

5 THE COURT: Yes, sir.

6 BY MR. NEAL:

7 Q Would you tell us the substance of that conversation?

8 A He said that he had been approached by Thomas
9 Parks and that Parks had offered him a sum of money to try to
10 talk to my daddy.

11 Q All right, now, who else was present during this
12 conversation? You and Carl Fields?

13 A My mother.

14 Q And what is her name?

15 A And my sister. Mrs. Annie Belle Fields.

16 Q Mrs. Annie Belle Fields, she is the wife of juror
17 Fields?

18 A That's right.

19 Q Anyone else?

20 A My oldest sister.

21 Q What is her name?

22 A Mrs. Risie Tease.

23 Q You might spell that for the court reporter.

24 A (Spelling by the witness.) R-I-S-I-E T-E-A-S-E.

25

End 32

32 A
follows

1 Q Now, Mrs. Leath, could you fix the approximate
2 date of this conversation?

3 A We talked about it at different times. I mean
4 more than once, I mean just as a family. I can't say what
5 particular date.

6 Q May I have the affidavit submitted by the defend-
7 ant? Mrs. Leath, it is a matter of record here and I think I
8 can state to you that the Hoffa trial in Nashville ended on
9 December 23, 1962, had you had this conversation with your
10 brother prior to that date?

11 A Yes.

12 Q It had been prior to that date?

13 A Yes.

14 MR. NEAL: Your Honor, that is the extent of the --
15 excuse me, indulge me just a moment. Yes, sir.

16 THE COURT: All right.

17 MR. NEAL: That is all the examination the govern-
18 ment has, your Honor.

19 THE COURT: All right. You may be excused at
20 this time, Mrs. Leath. You need to remain available.

21 (Witness excused.)

22 THE COURT: All right.

23 MR. NEAL: Your Honor, I believe this statement
24 now we are not offering this for the truth of the matter, you
25 understand, but as I understand the law, where a witness takes

1 the stand and testifies and he is attempted to be impeached
2 by prior inconsistent statements, then he can be rehabilitated
3 by a prior consistent statement made prior to the time of the
4 inconsistent statement. The testimony which was just elicited
5 is not offered for the truth of the matter but merely to
6 rehabilitate the witness to show that he had made the state-
7 ment prior to the time of the inconsistency.

8 I think the law is fairly clear on that. That
9 was the purpose of making it. It can either be offered now
10 by the witness through this witness or the witness can be
11 called in rebuttal. It is in the discretion of the Court.

12 THE COURT: What is your authority?

13 MR. NEAL: What is my authority for that?

14 THE COURT: Yes, sir.

15 MR. NEAL: Just a moment, your Honor, I will
16 get the authority for you.

17 THE COURT: All right, while he is looking for
18 the authority, does counsel for the defense wish to be heard?

19 MR. SILETS: Your Honor, I would like to cite
20 some authorities, what Mr. Neal is suggesting to the Court
21 is not to improve upon a prior inconsistent statement because
22 the witness didn't at this testimony make an inconsistent
23 statement. He testified to certain set of facts. Now, what
24 Mr. Neal is trying to do is to corroborate those facts by
25 this woman's testimony.

1 I cite you Goldberg versus United States, 213 Fed.
2 2nd, 734.

3 THE COURT: All right.

4 MR. BRANSTETTER: May it please the Court, the
5 rule of law is being misconstrued by counsel again. The rule
6 of law is this that if a witness is called and he is examined
7 on direct examination and then on cross examination he is
8 impeached by various statements or accused, this is the
9 correct statement, that he is accused of a recent fabrication
10 of his story, then a third party may be called to show that
11 he had made a prior consistent statement. Now, that is the
12 rule of law and that is not, it is not applicable at all to
13 this particular type of situation because no one accused this
14 prior witness of a recent fabrication.

32A End
32B fls

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1 The only thing this witness was accused of was
2 making a false affidavit and it was handed to him. Not a
3 recent fabrication.

4 MR. NEAL: Then, your Honor--

5 THE COURT: (Interposing) Just a moment. Just
6 a moment now, one counsel at a time. Was there anything
7 further, Mr. Branstetter:

8 MR. BRANSTETTER: No, I think not. I believe
9 the matter is clear.

10 THE COURT: All right.

11 MR. NEAL: Then, your Honor, if they are stipu-
12 lating the truth, the testimony of Carl Fields when he is
13 on the stand then certainly we have no objection. We will
14 agree with that stipulation.

15 MR. BRANSTETTER: Except it is up to the jury.

16 THE COURT: I believe the Court understands that.
17 I don't need any argument.

18 MR. NEAL: Your Honor, I cite the case of United
19 States vs. Sherman, 171 F. 2d 619, 621, and 622. Certiorari
20 denied sub nom.

21 Grimaldi vs. United States, 337 U. S. 931.

22 I also cite Lindsay vs. United States, 237 F.
23 2d 893.

24 I cite you United States vs. Corry. That
25 citation is--I'm stalling, your Honor, because I can't find

1 the citation. United States vs. Corry, 183 F. 2d, 155.

2 United States vs. Grunewald, 233 F. 2d 556, at
3 page, specifically, your Honor at Page 566.

4 I also cite to your Honor McCormick on Evidence,
5 particularly Page 108 and 109. The Hornbook Series.

6 I would like to quote from Corry, if I might,
7 please.

8 "Statements made by the witness in accordance
9 with his testimony at the trial are admissible after impeach-
10 ment if made before there is inducement to make these state-
11 ments because of pressure on personal interest."

En Tk 32B
Tk 32C fls.

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1 Your Honor, the allegation and implication here,
2 of course, is that he made false statements or made statements
3 to Mr. Osborn. Then the government got ahold of him and now
4 he makes other statements on the stand. That is simply what
5 we want to do is rehabilitate this witness to show that he
6 made these statements as the witness has testified, he had
7 told his mother and his two sisters about this approach,
8 improper approach by Parks, prior to the affidavit to Mr.
9 Osborn.

10 MR. SCHIFFER: Your Honor, on behalf of Mr. Parks,
11 maybe I can just reply briefly to Mr. Neal.

12 Mr. Neal conceals the fact which is already in
13 this record, we're not dealing here at all with the legal
14 principles governing a witness who might have a faulty
15 recollection or something, then they seek to on cross
16 examination, why he is found at fault. They rehabilitate him
17 on redirect because he has a faulty recollection.

18 We are not dealing with that case here at all and
19 Mr. Neal should show the Court a case on point where his own
20 witness for the government testified here under oath that
21 as of the time he took another oath which is in evidence here
22 he wilfully and deliberately and with intent falsified his
23 oath.

24 Now, where a man has committed that kind of a
25 sin, Your Honor, in law, he cannot be rehabilitated any more

1 on redirect and he certainly cannot be rehabilitated by any
2 third person coming in here and saying, well, he once said
3 something opposite to what he had sworn to and what is now
4 another affidavit, and contrary in part to what he swears here,
5 but on the third or fourth occasion sometime, regardless of
6 date, he did say something somewhat consistent to what the
7 government says he said.

8 What we have to overcome first one legal
9 proposition, here is a witness who says I did in effect
10 commit perjury. I tell you I did it with deliberation. And
11 with intent. How can you rehabilitate that kind of a witness?

12 THE COURT: All right.

13 MR. NEAL: Your Honor, I haven't seen any cases
14 by Schiffer as usual. I would like to cite one more.
15 Affronti (Spelling), A-F-F-R-O-N-T-I, versus United States,
16 145 F 2d 3. Particularly at Page 7. That is the Eighth
17 Circuit Court of Appeals, 1944.

18 And with respect to what I'm talking about I think
19 Mr. Schiffer made a pretty good statement for the government
20 as to what we are doing.

21 THE COURT: All right, now, then, gentlemen, can
22 Mr. Sheets and Mr. Sheridan be available the first thing
23 in the morning rather than pursue the matter this evening and
24 take up the first thing in the morning with reference to the
25 Jencks act matters?

1 MR. SILETS: Your Honor.

2 THE COURT: Yes, sir.

3 MR. SILETS: Inasmuch as these gentlemen are going
4 to be witnesses under United States versus Campbell can the
5 prosecution be directed not to discuss this matter with them
6 in advance of their testimony?

7 MR. NEAL: We will voluntarily not discuss it.
8 I wouldn't know what to discuss about.

9 THE COURT: All right.

10 MR. NEAL: May it please the Court, we will keep
11 this witness, as I believe your Honor will come to the con-
12 clusion it's admissible, we will keep Mrs. Leath here.

13 THE COURT: All right.

14 MR. NEAL: For short testimony in the morning,
15 unless we get an agreement we could read this in. Now, they
16 had an opportunity to cross. Could we read this in if the
17 Judge decides it's admissible?

18 MR. BRANSTETTER: No, may it please the Court,
19 of course not.

20 THE COURT: All right.

21 MR. BRANSTETTER: The questions were leading.
22 The matter he sought to rehabilitate on was not what the
23 witness said in the first place. The witness Carl Fields
24 said he talked to his mother, not to his sister, the record
25 will so show.

1 MR. HOOKER: No, he didn't, he said he talked to
2 his sister.

3 MR. NEAL: We will keep her then, if your Honor
4 please.

5 THE COURT: All right. All right. Is there
6 anything further that is appropriate for the Court to take
7 up this evening?

8 MR. BRANSTETTER: This case may have some
9 relevancy. I have not read the total case but it is Shotwell
10 versus U. S., 270 Fed. 2nd, at 413.

11 THE COURT: All right. Anything else?

12 MR. HAGGERTY: I think we are entitled to know --
13 Mr. Neal, I see you are busy studying the law -- I think we
14 are entitled to know have you any witnesses tomorrow and have
15 you any Jencks statements?

16 MR. NEAL: This is a matter that we weren't going
17 to discuss in court and I don't think we should do it then.

18 MR. HAGGERTY: Well, I am asking directly now
19 so I don't chase you all evening. You are a very rapid-
20 moving man.

21 THE COURT: All right, anything further? If not,
22 let's adjourn court until nine o'clock tomorrow morning.

23 (Thereupon, at 4:37 o'clock, p.m., court was
24 adjourned until 9:00 a.m., January 28, 1964.)

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REPORTER'S CERTIFICATE

I, Fred B. Downing, Official Court Reporter for the United States District Court, for the Eastern District of Tennessee, Southern Division, at Chattanooga, Tennessee hereby certify that Richard Smith and John E. Hamlin, court reporters, in accordance with stipulation of counsel for the parties filed in this case, recorded by machine shorthand the proceedings had in open court in the above styled case on January 28, 1964; and that said proceedings were reduced to typewriting under my supervision; and that the foregoing transcript is a true and correct transcript of the said proceedings to the best of my knowledge.

This the 28th day of January, 1964.

Fred B. Downing

Official Court Reporter

In The District Court of The United States

MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

UNITED STATES OF AMERICA,

v.

JAMES R. HOFFA, ET AL,

Plaintiff.

Defendants.

NO. 13,383

Place: Chattanooga, Tennessee

Date: 1/30/64

Before: HONORABLE FRANK W. WILSON, Judge

OFFICIAL TRANSCRIPT OF PROCEEDINGS

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TRIAL EXHIBITSNUMBERDESCRIPTIONFor
Ident.In
Evidence

Govt.			
42-45	Michigan Bell Telephone		2111
46-47	Company records	2119	2124
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48-50	Michigan Bell Telephone		
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TRIAL EXHIBITS (CONTINUED)

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>For Ident.</u>	<u>In Evidence</u>
52-53 Govt.	Michigan Bell Telephone Company records	2147	
54-59, Govt.	Illinois Bell Telephone Company records	2282	2287
60-62 Def. Dorfman	Telephone Bills (Dorfman's)	2317	
63-65 Def. Dorfman	Telephone Bills (Dorfman's)	2323	

NINTH DAY OF TRIAL

9:00 O'Clock A.M.
January 30, 1964

(Thereupon, pursuant to adjournment from January 29, 1964, court was in session. The jury of twelve and four alternates remained excluded from the courtroom and the following proceedings were had, to-wit:)

MR. SILETS: Your Honor, may it please the Court, reviewing the transcript of yesterday, I am not quite sure that I made my objections clear to the testimony of Mrs. Mix, Mrs. Harris, Mr. Kitchen, and objections to Exhibits 8 and 9 and 12 through 15. I'd like to interpose an objection to all of those on the ground that they do not pertain to Mr. Dorfman and have the jury instructed to disregard them.

THE COURT: All right. Gentlemen, the Court is of the opinion that the defendants' objections to the telephone records sought to be introduced by the Witness Schneider should be overruled. Those records should be admitted.

(The records previously marked Government's Exhibits Nos. 42, 43, 44, and 45 for identification, were received in evidence.)

THE COURT: The Court is of the opinion that the objections of Mr. Branstetter to the Court's instructions to the jury given in connection with the testimony of the Witness Mrs. Leath, that those objections should be overruled.

1 The Court is of the opinion that the motion or
2 objections made on behalf of the defendants to the instructions
3 given to advise the jury with regard to hearsay statements
4 and when they would be admissible as to any defendants, which
5 motion was filed on yesterday, should be overruled.

6 The Court is of the opinion that the defendants'
7 objections to any telephone calls on the grounds of irrele-
8 vancy and based upon the case of Laughlin, which is handed to
9 the Court, should be overruled.

10 The Court is reserving at this time for further
11 study of the cases the right of the defendants to examine
12 Mr. Sheets and Mr. Sheridan in regard to the Jencks statements.

13 All right.

14 MR. NEAL: Your Honor, I regretfully ask could
15 the government have ten minutes this morning? We were arranging
16 for four additional custodians from Michigan to come down and
17 to get started properly we need five or ten minutes.

18 THE COURT: All right. All right. Let's take ten
19 minutes then.

20 (Thereupon, a recess was had.)
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End Tk 1
Tk 2 fls

Tk 2 •
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1 (After recess, court was in session.)

2 THE COURT: All right, we will have the jury
3 return.

4 (Thereupon, the jury of 12 and four alternates
5 were brought into the courtroom.)

6 (Thereupon, the witness, Arthur Schneider,
7 returned to the witness stand and the following proceedings
8 were had to-wit:)

9 THE COURT: Ladies and gentlemen of the jury,
10 to avoid having to repeat and interrupt the trial and give
11 you additional instructions I will just instruct you generally
12 at this time that you in the trial of the case and in
13 consideration of any testimony you would consider any
14 testimony as it may be shown to relate to any defendant,
15 but would not consider it as to any defendant that is not
16 shown to relate. All in accordance with the former
17 instructions of the Court relating to testimony introduced
18 as to one or more defendants but less than all defendants.
19 All right, Mr. Neal.

20 REDIRECT EXAMINATION BY MR. NEAL:

21 Q Mr. Schneider, yesterday I had marked Government
22 Exhibit 42, 43, 44, and 45 and I believe you said they were
23 records of your company.

24 A Yes, sir.

25 Q Made in the regular course of business?

1 A Right.

2 Q And is it the regular course of business to make
3 these records?

4 A Yes, sir.

5 Q And I had offered these in evidence.

6 THE COURT: All right.

7 MR. SILETS: Same objection on behalf of the
8 Defendant Dorfman, Your Honor.

9 THE COURT: Overruled.

10 BY MR. NEAL:

11 Q Handing you now Government Exhibit No. 42, I ask
12 you what that is, sir?

13 A This is the customer record kept in our offices.

14 THE COURT: Mr. Schneider, now, will you please
15 speak out so everyone can hear you?

16 THE WITNESS: This is the customer record main-
17 tained in our offices of the resident account of James R.
18 Hoffa. It shows his address to be 16154 Robeson.

19 MR. NEAL: We are having a hard time hearing you,
20 please speak up.

21 THE WITNESS: The address is 16154 Robeson. That
22 is in Detroit. The telephone number is VE 7-1425.

23 BY MR. NEAL:

24 Q VE 7-1425.

25 A That is right, sir.

1 Q In Detroit?

2 A Yes, sir.

3 Q And was that his number in October, November, and
4 December, 1962?

5 A Yes, sir, it was.

6 Q Now, showing you first Government Exhibit No. 43
7 I ask you what that is.

8 A This is the customer record maintained in our
9 offices for the account of Larry Campbell. The telephone
10 number currently is 561--

11 Q (Interposing) Now, we are not interested, sir,
12 in currently. Does that show the telephone number in October,
13 November and December, 1962?

14 A Yes, sir.

15 Q What was that?

16 A That number was 562-3690.

17 Q 562-3690?

18 A That's right, sir.

19 Q Will you please turn to Government Exhibit No.--

20 THE COURT: (Interposing) What is the address
21 on that?

22 THE WITNESS: The address on this one is
23 26972 Ross.

24 THE COURT: Is that in Detroit?

25 THE WITNESS: That is in Inkster, which is a

1 suburb.

2 BY MR. NEAL:

3 Q If Your Honor is through, would you please turn
4 to Government Exhibit No. 44.

5 A This is the customer card of the account of Mary
6 Reeves.

7 Q Mary Reeves?

8 A Right, sir.

9 Q Detroit, Michigan?

10 A Yes, sir.

11 Q What was her number during the period October,
12 November, December, 1962?

13 A Her number during that period was 293-8271.
14 She resided at 5316 St. Aubin.

15 Q St. Aubin Avenue?

16 A Street, I believe it is. (Spelling.) A-U-B-I-N.

17 Q Would you turn to the next exhibit please?

18 A This is the--

19 THE COURT: (Interposing) Is that Exhibit No. 45?

20 THE WITNESS: Yes, sir.

21 BY MR. NEAL:

22 Q Exhibit No. 45?

23 A Yes, sir. This is the customer record card for
24 the Teamsters Local 299 located at 2741 Trumbull. That is
25 in Detroit.

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1 Q And what was this number in October, November,
2 December, 1962, principal number?

ad Tk 2 3 A Woodward 5-8750.

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1 Q And there were several subsequent numbers to
2 that, I believe.

3 A Yes, sir, they have a series of consecutive
4 numbers running from 50 to 58 and then numerous odd lines.

5 Q The principal number was, in October, November
6 and December, 1962, WO 5-8750?

7 A That is right, sir.

8 Q Now, do you have a credit card for WO 5-8750?

9 A Yes, sir. There are ten credit cards in existence
10 for that telephone number.

11 Q For that telephone number?

12 A That's right.

13 Q Teamsters Local telephone number?

14 A Yes, sir.

15 Q What is the number of the credit card?

16 A Well, it would be the Woodward 5-8750 and then
17 it is prefixed by a letter that determines the year of the
18 credit card. For example, in 1962 the letter was K, in '63
19 we used S, I believe this year we are using H, and then it
20 would be followed by 83, 83 is just a designation of where
21 that account is billed.

22 Q I see. So then what would be the number of the
23 Teamsters Local 299 credit card in 1962?

24 A It would be WO 5-8750 K83.

25 Q Instead of WO 5 it could be 965?

1 A 965.

2 Q 965 8750 K83. Now, with the credit card you just
3 charge calls to the credit card?

4 A That's right. The possessor of a credit card
5 can give this information to any operator any place in the
6 United States and place long distance calls, utilizing this
7 credit card number. In turn they would be accepted and
8 billed at the end of the month.

9 Q So a telephone credit card--

10 A (Interposing) Very similar to a gasoline credit
11 card.

12 Q A gasoline credit card or any other credit card?

13 A That's right.

14 Q When you make a long distance telephone call and
15 there is a record that we have seen, what some of the wit-
16 nesses have called a mark sense card?

17 A A mark sense card, yes.

18 Q Would you state whether or not if you make a
19 credit card long distance call and you give the operator your
20 credit card number, is that put on that card?

21 A Yes, sir, that is put on that card.

22 MR. NEAL: May I ask that these documents be
23 marked Government's Exhibits 46, I believe, and 47?

24 (The telephone company records referred to above
25 were marked Government's Exhibits Nos. 46 and
47, Witness Schneider, for identification only.)

1 Q I show you what has been marked for identification
2 as Government Exhibits Nos. 46 and 47 and ask you if they are
3 records of your company?

4 A Yes, sir, they are.

5 Q And are they, to your knowledge, records made in
6 the regular course of business?

7 A Yes, sir, they are.

8 Q Is it the regular course of your company's
9 business to make those records?

10 A Yes, sir.

11 Q And to make them at or about the event recorded?

12 A Yes, sir.

13 MR. NEAL: We offer them in evidence.

14 THE COURT: All right.

15 MR. SILETS: Same objection and ask that the jury
16 be instructed to disregard them as to Mr. Dorfman.

17 THE COURT: Overrule the objection. The same
18 instruction to the jury that the Court gave at the opening
19 of court this morning.

20 MR. BRANSTETTER: May it please the Court, I
21 think also we have our standing objection, even though the
22 Court has made some determination, that we certainly are not
23 waiving that objection in any respect to any defendant.

24 THE COURT: All right.

25 MR. HAGGERTY: May it please the Court, I'd like

1 an opportunity for voir dire of this witness before con-
2 senting to the admission of these documents, the proposed
3 exhibits, if I may.

4 THE COURT: I am not sure that I understand this
5 procedure, Mr. Haggerty.

6 MR. HAGGERTY: Well, here are exhibits offered
7 to me or offered to us and before I can admit or object,
8 because I do not understand the markings in the code of the
9 telephone company, I am asking the Court's permission to
10 question this witness as to certain items on these proposed
11 exhibits.

12 MR. NEAL: I will bring that out if you say what
13 you want brought out.

14 MR. HAGGERTY: I prefer to bring it out myself,
15 Mr. Neal, but I thank you for your courtesy.

16 MR. NEAL: I thought--

17 THE COURT: (Interposing) I am just not familiar
18 with that procedure. I believe that is a matter that should
19 be brought out on cross-examination.

20 MR. HAGGERTY: Not necessarily, your Honor,
21 before the admission of it I think it is standard practice.

22 THE COURT: Well, all right. I will allow you
23 to ask him some questions.

24 MR. HAGGERTY: May I have them, please? Have
25 these been stamped as exhibit numbers?

1 MR. NEAL: Yes, they are on the back.

2 MR. DALE: They are marked in pencil now.

3 MR. HAGGERTY: Mr. Witness, in plain English this
4 is a telephone call from what number to what number?

5 THE WITNESS: This, sir, is a--

6 THE COURT: (Interposing) What exhibit are you
7 referring to, what exhibit number?

8 MR. HAGGERTY: Forty-seven.

9 THE WITNESS: Forty-seven, sir. This is an
10 operator-handled long distance message, sir, from a coin
11 telephone in the Vermont 5 exchange in Detroit. It was
12 charged to Cred Card 965 8750 K83. The call was made on the
13 22nd day of October in 1962. The call was made to Nashville,
14 Tennessee.

15 It started as a person call, in other words, the
16 party making the call requested to speak to a specific party,
17 in this case it was Mr. Hoffa. At the time he was not there.
18 They made the statement that he would be back in a few
19 minutes and the calling party agreed to talk to the party
20 on the line, whoever that was.

21 The call was made at 12:53 A.M. and the duration
22 of the call was a minute and six seconds.

End Tk 3 23
T 4 fls.

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1 Q (By Mr. Haggerty) What was the date of the
2 call?

3 A The date was October 22, 1962.

4 Q We are referring to the proposed Exhibit No. 46?

5 A Yes, sir, No. 46.

6 Q All right.

7 A This is a record of a long-distance call made on
8 that same day, October 22, 1962. It was from a Vermont 5
9 coin telephone in Detroit to Louisville, Kentucky, to Area
10 Code 502, which is the area code for the Louisville area.
11 The number called was 582-9860. It was charged to a credit
12 card, 965-8750-K-83. Same credit card used on the other call.
13 The call was made at 12:49 a.m. The duration of the call was
14 two minutes and twenty-eight seconds.

15 Q Now, sir, one more question.

16 A Yes, sir.

17 Q If a person placing a long-distance call furnishes,
18 is not authorized, or furnishes the operator with a number
19 that he is not authorized to use, will the operator put the
20 call through?

21 THE COURT: This is cross examination, Mr.
22 Haggerty.

23 MR. NEAL: This is not voir dire, your Honor. I
24 thought voir dire was to determine the competency of the
25 man to produce the exhibit.

1 MR. HAGGERTY: Very well, I withdraw my question.

2 MR. NEAL: We had offered these two in evidence.

3 I'm not sure they have been received in evidence.

4 THE COURT: Yes.

5 (The documents previously marked Government's
6 Exhibits Nos. 46 and 47 for identification were
received in evidence.)

7 BY MR. NEAL:

8 Q Now, sir, taking No. 46, will you tell us just
9 again just briefly what Government Exhibit No. 46 is, a call
10 from a Detroit --

11 A (Interposing) Detroit, Vermont 5 number to a
12 number in Louisville, Kentucky, charged on the credit card
13 965-8750-K-83.

14 Q That is the Teamster credit card?

15 A That is the credit card issued to the Teamsters.
16 It was placed at 12:49 a.m., 22nd day of October, 1962. It
17 was handled by Operator 314. It was a call of two minutes
18 and twenty-eight seconds' duration.

19 Q And the call was to Louisville, Kentucky, and
20 what number?

21 A 582-9860.

22 Q 582-9860?

23 A Yes, sir.

24 Q And was it made from a pay phone in Detroit?

25 A It was made from a pay telephone, that's right.

1 Q Now, the next one, sir, Government No. 47?

2 A This is a long-distance call made from a Vermont
3 5 coin telephone again. Charged to the same credit card.
4 It was placed as a person call Mr. Hoffa. Instructions are
5 here that this is the number of the Andrew Jackson Hotel in
6 Nashville. Mr. Hoffa was not there at the time. They stated
7 he would be back in a few minutes. However, the calling party
8 agreed to talk to the party on the line. This also was
9 handled by Operator 314. This call was at 12:53 a.m., and
10 was of a minute and six seconds' duration.

11 Q Now, was there any lapse between the time that
12 they asked for Hoffa and then they decided to speak to the
13 party on the line?

14 A Yes, sir.

15 MR. BRANSTETTER: May it please the Court, I
16 think counsel is doing again what the Court instructed him
17 not to do on yesterday. This witness doesn't know whether
18 there was a lapse of time or anything else. He can state what
19 is on the record and that is all, and I think it should be
20 confined to that. The truth or falsity of it is a different
21 matter.

22 BY MR. NEAL:

23 Q What do the records show in that respect?

24 A The call, the second call, the person calling Mr.
25 Hoffa originally was made at 12:51. Now, this is a person

1 call and we do not start timing a person call until the
2 person requested is on the line. So at 12:51 the gentleman
3 was not there and then the calling party agreed to talk to
4 someone else. And actual conversation started at 12:53.

5 Q All right.

6 A So, there is two-minutes' lapse.

7 Q Now, sir, the first call was from a VE 5 exchange
8 in Detroit?

9 A Right, sir.

10 Q To a Louisville number?

11 A Right, sir.

12 Q The second call was from a VE 5 exchange to
13 Hoffa at the Andrew Jackson Hotel and spoke to the party on
14 the line?

15 A Yes, sir.

16 Q What is the time sequence between those two
17 calls?

18 A Well, from 12:49 he talked two minutes and twenty-
19 eight seconds. And immediately the other connect time or
20 time of try was 12:51. So --

21 Q (Interposing) One follows immediately beyond the
22 other?

23 A One follows immediately after the other.

24 MR. BRANSTETTER: If it please the Court, what-
25 ever the records show.

1 BY MR. NEAL:

2 Q According to your records?

3 A According to the records.

4 Q Both from the same exchange in Detroit?

5 A Yes, sir, Vermont 5.

6 Q Both are charged on the same credit card?

7 A Yes, sir.

8 Q Now, I believe that you said you were familiar
9 in your years with the operations of the operators and
10 telephones?

11 A Yes, sir.

12 Q And the procedure of placing calls and so forth?

13 A Yes, sir.

14 Q In your sixteen years with the company?

15 A Yes, sir.

16 Q Now, sir, can you state whether or not in your
17 opinion those calls were made by the same person?

18 MR. SCHIFFER: Objected to, your Honor.

19 MR. HAGGERTY: We object, your Honor.

20 THE COURT: Sustain the objection.

21 MR. NEAL: Your Honor, I believe this man has
22 been qualified as an expert on that matter. He can explain
23 his opinion.

24 MR. HAGGERTY: He is not qualified as a mystic,
25 however.

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End Tk 4
4A fls

MR. NEAL: I think your Honor will see there is
nothing mystic about this if the witness is allowed to answer
and explain his answer. He has been sixteen years with the
company. Involved with the procedure of placing calls.

1 THE COURT: Sustain that.

2 MR. NEAL: Procedure of the operators in making
3 calls and recording calls.

4 THE COURT: Yes, before the Court could pass
5 upon that I would have to hear the testimony. And I don't
6 want to excuse the jury at this time. I'm going to sustain
7 the objection and reserve the right to take the matter up
8 at an appropriate recess.

9 MR. NEAL: Very well, Your Honor. It may be
10 when we're otherwise through with the witness shall we pass
11 that for now and come back?

12 THE COURT: All right.

13 BY MR. NEAL:

14 Q Now, let me make sure I understand you. Now,
15 those two calls were made from pay phones?

16 MR. BRANSTETTER: May it please the Court, I'm
17 sure counsel already understands it. He is trying to
18 obviate the Court's ruling.

19 THE COURT: Overrule the objection.

20 BY MR. NEAL:

21 Q Were the same two calls made on the same day?

22 A Yes, sir.

23 Q Immediately following each other?

24 MR. BRANSTETTER: If it please the Court, this
25 is the third time he has gone through this exact thing.

1 THE COURT: All right, proceed.

2 BY MR. NEAL:

3 Q And were they made from pay phones?

4 A Yes, sir.

5 MR. BRANSTETTER: May it please the Court, he is
6 leading the witness. Let him ask what the records show.

7 BY MR. NEAL:

8 Q What do the records show with respect to the
9 phones?

10 A They were made from coin phones, sir, in the same
11 exchange.

12 Q I will ask you to mark this as Exhibit No. 48,
13 No. 49 and No. 50.

14 (The telephone company records referred to above
15 were marked Govt. Ex. No. 48, No. 49 and No. 50
for identification, witness Schneider.)

16 Q I show you what has been marked for identification
17 as Government Exhibits No. 48, No. 49 and No. 50 and ask you
18 if you recognize those, sir?

19 A Yes, sir.

End
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1 Q Are they records of your company?

2 A Yes, sir, they are.

3 Q And to your knowledge, sir, are they records made
4 in the regular course of business?

5 A Yes, sir.

6 Q And was it the regular course of your company's
7 business to make those records?

8 A Yes, sir.

9 Q At or about the time of the events recorded?

10 A Yes, sir.

11 Q We offer them in evidence and pass them to defense
12 counsel.

13 MR. SILETS: Same objection.

14 THE COURT: The same ruling and instruction.

15 MR. BRANSTETTER: I want the record to show,
16 may it please the Court, this is going to the competency
17 also under the basis of the objections on yesterday.

18 THE COURT: Same ruling, the same instruction.

19 (The documents previously marked Government's
20 Exhibits Nos. 48, 49 and 50 for identification
were received in evidence.)

21 BY MR. NEAL:

22 Q On the last two calls, Mister--

23 MR. SCHIFFER: (Interposing) May we ask Mr. Neal
24 to refrain from inquiring while we examine the records,
25 please, your Honor?

1 MR. BRANSTETTER: Same objections that we made.

2 MR. NEAL: We offered these in evidence, your
3 Honor. Were these received in evidence, your Honor, the last
4 three?

5 THE COURT: Yes.

6 Q Mr. Schneider, on the first two, the ones you
7 just spoke of from Detroit to Louisville and Detroit to--

8 A (Interposing) To Nashville.

9 Q To Nashville when Hoffa spoke to the party on
10 the--

11 MR. SCHIFFER: Object.

12 MR. BERKE: Objection.

13 MR. SCHIFFER: That's not the record, not the
14 testimony. Now, Mr. Neal persists in misquoting the evidence.
15 I say he has a purpose in mind of prejudicing the defendants
16 before this jury. He keeps harping on things not in evidence,
17 puts his own construction on the questions, repeating and
18 repeating and the jury may feel that what he is repeating is
19 the evidence and it is not so, your Honor.

20 MR. HAGGERTY: May I address the Court? Your
21 Honor, this is obviously an attempt to prejudice. Now, the
22 facts from the information--

23 THE COURT: (Interposing) I sustain the objection,
24 gentlemen, to the question.

25 MR. HAGGERTY: May the government attorney be

1 instructed not to indulge--

2 THE COURT: (Interposing) Yes, instruct the jury
3 not to consider counsel's statement and instruct the attorney
4 not to lead the witness.

5 MR. NEAL: I did want to go back over those calls
6 a moment but I don't want to cite the evidence.

7 BY MR. NEAL:

8 Q What was the first call, from where to where,
9 briefly?

10 A The first call was a call from a Vermont 5 coin
11 telephone to Louisville, the other was from a Vermont 5 coin
12 telephone to Nashville.

13 Q And the first one was to where?

14 A The first one was to Louisville, Kentucky.

15 Q And where was the second one?

16 A To Nashville.

17 Q And what does the record show with respect to
18 whether this was person to person or not?

19 A They were both credit card calls from coin
20 stations. The second one was a person call to Mr. Hoffa
21 but did not speak to Mr. Hoffa.

22 Q Whom did they speak to?

23 A The party who answered.

24 Q Was that party on the line?

25 A That was the party on the line.

1 MR. SCHIFFER: Objected to, your Honor. This
2 witness or Mr. Neal elicits from this witness whether this
3 witness has personal knowledge of the fact of the identity
4 of the person who spoke on the line.

5 THE COURT: He doesn't testify to that.

6 MR. SCHIFFER: Well, then, your Honor, I move
7 that the question and the answer be stricken, it's obviously
8 without his knowledge to know this information.

9 THE COURT: Overrule the objection.

10 BY MR. NEAL:

11 Q Is that what the record shows, Mr. Schneider?

12 A That's what the record shows.

13 Q What was the time sequence between the call to
14 Louisville and the call--

15 MR. BRANSTETTER: (Interposing) That's the
16 fourth time by actual count. Now, this again is--they may
17 do this way in Washington, may it please the Court.

18 MR. NEAL: I withdraw, I withdraw it, Mr. Bran-
19 stetter.

20 BY MR. NEAL:

21 Q Now, would you state whether or not according
22 to the records those first two calls were placed through the
23 same operator?

24 A They were, sir.

25 Q The same operator?

1 A The same operator handled both calls.

2 Q All right. Now, with respect to the records
3 there, 48, 49 and 50, will you tell me what the records show
4 with respect to 48, Government's Exhibit 48?

5 A This was--this is a record, rather, of a long
6 distance call from a coin telephone in Detroit in the Wood-
7 ward 4 exchange to Louisville to a telephone number in Louis-
8 ville of 583-9860. The call was charged to Credit Card 965-
9 8750 K83. This call was placed through Operator 119, it was
10 made at 5:03 P.M. The duration of the call--

11 THE COURT: (Interposing) At what time?

12 THE WITNESS: 5:03 in the afternoon, P.M., sir.

13 THE COURT: All right.

14 A Three minutes and 40 seconds was the lapsed time
15 of the message.

16 Q Was that from a coin phone or otherwise?

17 A This was from a coin telephone in the Woodward 4
18 exchange in Detroit.

19 THE COURT: What was the credit card number?

20 THE WITNESS: 965-8750 K83.

21 Q And what credit card is that?

22 A That is a credit card issued to Teamsters Local
23 299.

24 Q Now, sir, would you go to the next document,
25 Government's Exhibit No. 49, and tell us what that shows?

1 A This is a call from a Detroit coin telephone,
2 again the Woodward 4 exchange, to Nashville to the number in
3 Nashville AL 5-2121 to Room No. 740.

4 Q Room No. 740 in AL 5?

5 A 2121. It was handled by Operator 119. It was
6 placed at 5:10 P.M., it was a call of 58 seconds duration.

7 Q Was that made--strike that. May I show the jury
8 Government's Exhibit No. 11?

9 A JUROR: What was the date of those two calls,
10 please?

11 THE WITNESS: These two calls, sir?

12 THE COURT: Excuse me just a moment. The jury
13 may ask questions but direct them to the Court first. Yes,
14 if you will, please state the dates on those two.

15 THE WITNESS: These two calls were made on October
16 25, 1962.

17 BY MR. NEAL:

18 Q The call to Louisville and the call to Nashville?

19 A Yes, sir.

20 Q All right. Now, sir, would you go to the next,
21 did you give me the duration of that call?

22 A I believe I did, sir.

23 Q Would you go to the next one, please?

24 A That last call was 58 seconds. This call is
25 from a--

1 THE COURT: (Interposing) What are you referring
2 to now, what exhibit?

3 THE WITNESS: This is the third. Oh, excuse me.

4 MR. NEAL: Government's Exhibit No. 50.

5 THE WITNESS: Fifty.

6 THE COURT: What was Exhibit 11 that was handed?

7 MR. NEAL: Your Honor, that was a card showing
8 the telephone number of the Andrew Jackson Hotel to the
9 ALpine 5-2121 that the witness has just identified as one of
10 the calling numbers or the number called, rather.

11 BY MR. NEAL:

12 Q Would you go ahead, please?

13 A This is a--

14 THE COURT: (Interposing) Exhibit No. 50 you
15 are referring to?

16 THE WITNESS: Fifty, sir. A call from a coin
17 telephone in Detroit and the Woodward 4 exchange to Louisville.
18 The number called there was 582-9860, it was charged to a
19 Credit Card 965-8750 K83, it was handled by Operator 119,
20 the call was made at 5:13 and it was for a minute and 29
21 seconds.

22 THE COURT: 5:13 A.M. or P.M.?

23 THE WITNESS: That is P.M., sir.

24 THE COURT: And the date?

25 THE WITNESS: That also was October 25, 1962.

1 BY MR. NEAL:

2 Q Now, sir, could you tell me what the time
3 sequence is on those two?

4 A Well, they run from the first call at 5:03 P.M.
5 to the last one at 5:13, they were made, figuring the duration
6 of the calls, they were made one right after another.

7 Q One right after another. And were they from the
8 same booth or from a pay booth?

9 MR. BRANSTETTER: May it please the Court, he
10 again asks what the record shows with reference to the
11 exhibits, that's all.

12 Q What does the record show with respect to the
13 type of call it was, a pay booth phone?

14 A All three calls were from pay phones in the
15 Woodward 4 exchange, all handled by the same operator.

16 Q All handled by the same operator?

17 A Yes, sir.

End Tk 5 18
Tk 5A fls.

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Tk 5A
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1 Q And all charged to what credit card?

2 A All charged to the Teamsters credit card.

3 Q Can you state whether or not they were all from
4 the same booth?

5 A I can't from these records, no, in all likelihood
6 they were.

7 MR. BRANSTETTER: I object.

8 MR. HAGGERTY: I object to the likelihood and
9 ask that it be stricken.

10 THE COURT: Sustained. Sustained, yes.

11 BY MR. NEAL:

12 Q Now, sir, all five cards, I believe all five cards
13 you have just testified were to one number, only one number
14 in Louisville, is that correct? What about the last three
15 cards, the last three calls?

16 A Of these last three cards two are to the same
17 Louisville number, the other being--

18 Q (Interposing) Would you give the number?

19 A Being a Nashville number. The Louisville number
20 is 582-9860.

21 Q 582-986?

22 A 60.

23 MR. NEAL: I'd like to show Government's Exhibit
24 No. 20 and Government's Exhibit No. 16 to the jury.

25 THE COURT: Exhibits No. 20 and what?

1 MR. NEAL: And No. 16 to the jury at this time.

2 MR. BRANSTETTER: May it please the Court, we
3 want the jury to see these matters, or any other matters, but
4 I believe the writing is still on them that the government
5 said they would take off. I don't know whether it is of any
6 importance or not but I rather doubt if this is the appropriate
7 method of handling this matter as a general proposition.

8 MR. NEAL: I only show the front part of the
9 pictures, Your Honor.

10 THE COURT: Look only at the front part.

11 MR. BRANSTETTER: They have been passed down once.
12 We don't mind them holding them and keeping them, as far as
13 that is concerned, but let's don't have it done in this
14 manner, may it please the Court. The jury can take them and
15 keep them all of the time but let's don't switch them back
16 and forth. This is not the proper procedure and counsel
17 knows it, it is arguing the case in advance.

18 MR. NEAL: To show the jury exhibits admitted
19 into evidence?

20 THE COURT: Let's proceed.

21 MARSHAL MANSFIELD: Have order in the court, please.

22 BY MR. NEAL:

23 Q Now, sir, what were the other numbers in Louisville
24 called, the other calls you have just spoken of?

25 A You mean on the first two?

5A-3

Schneider - Redirect

2141

1 Q Yes.
2 A May I have the message card again to verify?
3 Q Let's see, that was Government's Exhibits 46 or
4 47.

End Tk
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Tk 6
follows

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1 A That was to Louisville, 582-9860.

2 Q So, then, all three of the calls to Louisville
3 were to the same number?

4 A To the same number, that's correct.

5 Q And the other two were to where?

6 A Nashville.

7 Q I see. Fine. Now, sir, these last three calls,
8 did you say whether or not they were to the same operator?

9 A Yes, they were.

10 Q How many operators do they have on a WO 4 exchange
11 from which the last three calls, the exchange from which the
12 last three calls were made?

13 A At this hour in the afternoon there are twenty-two
14 operators.

15 Q Twenty-two operators?

16 A Right, sir.

17 Q Now, the other two calls, one to Nashville, one
18 to Louisville, and then to Nashville was from VE 5 exchange?

19 A VE 5.

20 Q How many operators do they have at the time those
21 calls were made on duty at a VE 5 exchange?

22 A At that very early hour of the morning there would
23 be twelve operators.

24 Q Now, sir, would you tell me if you would, please, --
25 strike that, Mr. Reporter.

1 I would like for this to be made Government
2 Exhibit No. 51.

3 (The telephone company record referred to above
4 was marked Government's Exhibit No. 51, Witness
Mr. Schneider, for identification only.)

5 MR. BRANSTETTER: I don't believe it has been
6 introduced, may it please the Court. We would like to look
7 at it.

8 BY MR. NEAL:

9 Q I am showing you what has been marked Government
10 Exhibit No. 51. I ask you, sir, if you recognize that with-
11 out saying what it is?

12 A Yes, sir, I recognize it.

13 Q Is it a record of your company?

14 A Yes, sir.

15 Q Is it a record of your company made in the
16 regular course of business?

17 A Yes, sir.

18 Q And is it regular course of your company's business
19 to make that record?

20 A Yes, sir.

21 MR. NEAL: I offer it in evidence and show it to
22 defense counsel.

23 MR. BRANSTETTER: May it please the Court, in
24 line with the previous practice could I ask this witness
25 about two questions preliminarily to determination of the

1 admissibility?

2 THE COURT: All right.

3 VOIR DIRE EXAMINATION

4 BY MR. BRANSTETTER:

5 Q You say this is a record that is kept in the
6 regular course of your business?

7 A Yes, sir.

8 Q Does the regular course of your business require
9 the red mark that is on it, the dots? Look at it if you will.

10 A No, sir, it does not.

11 Q All right, who put that on there?

12 A I did, sir.

13 Q When did you do it?

14 A Well, actually before I left Detroit, sir.

15 Q That part of the record is not a part of your
16 regular record-keeping system at all?

17 A The red dot is not, sir, that is right, sir.

18 Q And when did you first bring it to the attention
19 of counsel that you had changed this record?

20 A Well, I showed him the record a couple or three
21 nights ago. I don't really recall which night, sir.

22 Q But you now state that this is not a record in
23 its totality as is normally kept by your company in the
24 regular course of business? It has been altered? Changed?

25 A Yes, sir.

FURTHER REDIRECT EXAMINATION

BY MR. NEAL:

Q It has been altered by placing a red dot there?

A Yes, sir.

Q And why did you place a red dot there?

A May I now say what this is?

Q What does the red dot indicate?

MR. BRANSTETTER: May it please the Court, he is testifying from the record and we are objecting to its admissibility.

MR. NEAL: What is that record?

THE COURT: Just a moment. Defense is objecting to that. Mr. Schneider, you say is everything on that record a regular record except what you put on there yourself?

THE WITNESS: Yes, sir.

THE COURT: All right. Overrule the objection.

MR. NEAL: May the document be received in evidence, your Honor?

MR. BRANSTETTER: We, of course, may it please the Court, again request that the hazard of trying to follow technical rules of law that we object on the basis that we have previously to all these documents.

THE COURT: All right, same ruling.

BY MR. NEAL:

Q Would you tell us what this is?

1 A This, sir, is a map outlining the Vermont
2 exchange in Detroit.

3 Q Vermont exchange?

4 A That's right.

5 Q VE exchange?

6 A Right. VE exchange.

7 Q You had indicated previously that some calls were
8 made you testified to from the VE exchange?

9 A Right, sir.

10 Q Would you tell me whether or not, sir, the
11 residence of the Defendant Hoffa is in the VE exchange?

12 A It is, sir.

13 Q And have you indicated such?

14 A Yes, sir.

15 Q And how did you indicate it?

16 A By the customer record. The address there
17 correlates with the address in a location shown on this map
18 within --

19 Q (Interposing) What does the red dot signify?

20 A The red dot simply pinpoints the resident
21 address.

22 Q Of whom?

23 A Of Mr. Hoffa.

24 Q Is that the reason you put the red dot on there?

25 A Yes, sir.

1 MR. NEAL: I ask that these be marked as Govern-
2 ment Exhibit No. -- may it please the Court, the Reporter just
3 brings up something that just now brought up something that
4 has bothered me. By going over the transcript last night,
5 it is not clear in the transcript that certain exhibits have
6 been received in evidence.

7 MR. HAGGERTY: Just a moment, I object. I
8 object. I object to any statement of that kind before the
9 Court in the presence of the jury.

10 THE COURT: We will take that up at the time of
11 any recess.

12 MR. NEAL: Very well, your Honor.

13 (The telephone company records referred to above
14 were marked Government's Exhibits Nos. 52 and
15 53, Witness Mr. Schneider, for identification
only.)

16 BY MR. NEAL:

17 Q I now show you what has been marked as Government
18 Exhibits No. 52 and No. 53 and ask you if you recognize those?

19 A Yes, sir.

20 Q Are these records of your company?

21 A Yes, sir, they are.

22 Q Are the records made by your company in the
23 regular course of business?

24 A Yes, sir, they are.

25 Q And is it in the regular course of your company's

1 business to make those records?

2 A Yes, sir.

3 Q At or about the time of the event recorded?

4 A Yes, sir.

5 MR. NEAL: I offer these in evidence.

6 THE COURT: All right.

7 MR. SILETS: Same objection, your Honor, and
8 request for the same instructions to the jury.

9 THE COURT: The Court gave a standing instruction
10 this morning in that respect. Objection is overruled.

11 MR. BRANSTETTER: We take our standing objection
12 to the admissibility.

13 THE COURT: All right, same ruling. Allow it to
14 be overruled.

15 BY MR. NEAL:

16 Q Now, Mr. Schneider, taking the collective exhibit
17 which appears to be a number of records of a number of tele-
18 phone calls, is that correct?

19 A Yes, sir.

20 Q And would you tell us just whether or not all
21 those calls are from Louisville, Kentucky?

22 A These are all from Louisville, Kentucky, sir.

23 THE COURT: What exhibits are you referring to?

24 MR. NEAL: Excuse me, what exhibit, sir?

25 THE WITNESS: Exhibit No. 53, sir.

1 BY MR. NEAL:

2 Q And what is the general, what is the year of
3 those calls?

4 A 1962.

5 Q And what is the general period of that year?

6 A They are all October and November.

7 Q 1962?

8 A Of 1962, right, sir.

9 Q And are they all from coin phones?

10 A They are all from coin telephones in Louisville
11 to Detroit.

12 Q And to what number in Detroit?

13 MR. BRANSTETTER: May it please the Court, did
14 this witness state that these records were kept in Louisville
15 or in Detroit?

16 THE WITNESS: I beg your pardon, sir?

17 BY MR. NEAL:

18 Q Where are these records kept?

19 A These records are kept in Detroit.

20 Q Would you continue, please?

21 A They represent coin calls from Louisville to
22 Detroit to a telephone number LO 2-3690. (E 43)

23 Q Now, from the exhibits you have previously intro-
24 duced, can you tell me what -- who has that number in Detroit?

25 A That was the number of Larry Campbell.

6 - 9

• Schneider - Redirect

2150

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Q

During the period of time October and November

2

1962?

3

A

Right.

4

Q

Approximately how many calls are there?

5

A

About fifteen, sir.

Tk 6 End
Tk 7 fls

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All right, sir, now the next exhibit is what, sir?

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Schneider - Redirect

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1 Q That exhibit, sir, is what number?

2 A This one is marked 52.

3 Q All right, sir. Now, what is that?

4 A This is a record of a long distance call from a
5 coin telephone in Louisville, Kentucky, to Detroit.

6 WA 3-8271, it was made on the 3rd of November and charged--

7 Q (Interposing) Is that--

8 A (Interposing) In 1962.

9 Q Can you tell me who has that number or who had
10 that number in Detroit at this time?

11 A At that time it was the account of Mary Reeves.

12 Q Mary Reeves. Was the state of Michigan on
13 Eastern Standard Time throughout the year 1962?

14 A Yes, sir.

15 Q Now, were all of those calls on any particular
16 credit card, Exhibits 52 and 53?

17 A They were all on a credit card.

18 Q What credit card?

19 A 9678750 K83.

20 Q And that's the Teamsters credit card?

21 A Teamsters Local 299.

22 Q And what kind of phones were they made from?

23 A These were all made from coin telephones.

24 MR. NEAL: I see. May it please the Court, we
25 are at that point where we would like to pursue the two

1 questions of this witness and we will be through with the
2 witness.

3 THE COURT: Well, if that is all then let's
4 reserve that for recess and allow the defendants to cross
5 examine at this time.

6 RECROSS EXAMINATION

7 BY MR. BRANSTETTER:

8 Q Could I have your name again, please? I apologize
9 because overnight I have forgotten.

10 A Arthur H. Schneider.

11 Q Mr. Schneider, we will begin at the most recent
12 event and go backward, if we can. The collective exhibit
13 of the call, the one that you just referred to, did you state
14 those were all made to the home of Larry Campbell?

15 A I said it was to LO 2-3690, telephone number
16 which, according to that other record, was the residence,
17 I believe, of Larry Campbell, it was in the name of Larry
18 Campbell.

19 Q Yes. His home?

20 A Yes.

21 Q And they were made from Louisville to Larry
22 Campbell's home in Detroit or Inkster.

23 A That's right.

24 Q Now, you have no personal knowledge as such of
25 any of the contents of these records, do you?

1 A I'm afraid I don't understand the question.

2 Q Do you have any personal knowledge of the matters
3 that you read from the record, you have just used the records,
4 is that correct?

5 A That's right.

6 Q Sure. Now, do you know whether or not during
7 the period of time that you are talking about that there was
8 an organizational campaign in Louisville, Kentucky, of the
9 General Electric plant by the Teamsters Union?

10 A No, sir.

11 Q Were you asked to check by the government on any
12 of these calls with reference to whether they were made at
13 or near the General Electric plant or at the Teamsters
14 headquarters or about the Teamsters headquarters in Louisville?

15 A No, sir.

16 Q Were you asked to check whether or not any of
17 the calls were made from a pay station close to the General
18 Electric plant?

19 A No, sir.

20 Q Were you asked to check whether or not there was
21 a national labor relations board election and petition over
22 several unions organizing General Electric in Louisville
23 during this exact period?

24 A No, sir.

25 Q You mean the government never asked you none of

1 them?

2 MR. NEAL: Your Honor, this witness is from Detroit.

3 MR. BRANSTETTER: He is testifying about what
4 occurred in Louisville. We may do this way in Washington,
5 we don't do that--

6 MR. HOOKER: (Interposing) We object to that,
7 that's an improper remark.

8 THE COURT: Gentlemen, address your remarks to
9 the Court. Let's not have this business of counsel arguing
10 between themselves.

11 MR. BRANSTETTER: I apologize to the Court. Mr.
12 Neal--

13 MR. HOOKER: (Interposing) It has been made
14 two or three times this morning, a little late to apologize
15 about it, it has been made several times by my friend
16 Branstetter. We object to it.

17 THE COURT: Let's proceed. Sustain the objection.

18 BY MR. BRANSTETTER:

19 Q You were asked to check none of the locations?

20 A No, sir.

21 Q Or the phones in Louisville. You were asked to
22 check none of the phones or their locations in Detroit
23 except the one that you marked on the residence, I believe,
24 of Mr. Hoffa's home?

25 A That's right.

1 Q Have you ever seen Mr. Hoffa's home?

2 A No, sir, I have not. I am acquainted with the
3 general area.

4 Q Sure. But you just took this from the records as
5 such under the street address?

6 A That's right.

7 Q Do you know and were you asked by the government
8 to determine how many different individuals that are business
9 agents, secretaries, or have other affiliations with Local
10 299 that have credit card number 9678750 K83?

11 A No, sir.

12 Q Do you know?

13 A I don't know. There are ten issued to that number.

14 Q There are ten separate cards?

15 A Right, sir.

16 Q So any or all of these calls could have been
17 placed legitimately and properly by any of ten persons?

18 A Right, sir.

19 Q Or let me ask you this way: According to your
20 experience and to your knowledge in this field if I lose my
21 credit card and Mr. Neal over here picks it up, could he
22 dial the operator and say, "Credit card number 9678750 K83."

23 A It could be done, sir.

24 Q And there would be no question made of that?

25 A Not by the operator, no, sir.

1 Q Also if I said to Mr. Neal, "Here is my credit
2 card. Go make a call for me, or go make a call, use it, you
3 are welcome to it." There would be no question about it.

4 A No, sir.

5 Q And your records would not show any of this
6 transaction at all.

7 A Simply the credit card number.

8 Q Right. Do you know or did the government ask you
9 to check to determine the number of long distance telephone
10 calls charged to the Local 299 credit card during this three
11 or four months or five months period?

12 A No, sir.

13 Q Do you know that there are several thousand calls
14 per month charged to this credit card, both during that
15 period and continuously?

16 A I know it's quite a large account.

17 Q You know it is a large account?

18 A That's right, sir.

19 Q And, of course, the company appreciates a large
20 account, I am sure.

21 A Yes, sir.

22 Q But you know that they make many, many calls,
23 long distance calls, that you did not bring with you?

24 A That's right, sir.

25 Q Do you know whether or not there were many other

1 calls made from Detroit to Louisville or to the Teamsters
2 Local in Louisville, Kentucky, or event to the General
3 Electric plant in Louisville, Kentucky, during this period?

4 A I don't know that, sir.

5 Q You don't know. You were not asked to bring
6 any other records other than those you brought.

7 A That's right.

8 Q And these records were specified to you as to
9 what you would bring, were they not, you were told which
10 records to bring.

11 A Yes, sir.

12 Q Right. Have you ever lived in Louisville?

13 A No, sir, I have not.

14 Q Do you know where the General Electric plant is
15 in Louisville?

16 A I do not, sir.

17 Q Do you know where the appliance parts division
18 of General Electric is in Louisville or where Buechel Road
19 is in Louisville?

20 A No, I do not, sir.

21 Q You do not have any maps or diagrams or code
22 areas that designate this particular area, as far as you know?

23 A Not in my possession, sir.

24 Q And you were not asked to bring it?

25 A No, sir.

1 Q And I believe I asked you--, you were not asked
2 to bring or did you bring telephone calls of a long distance
3 type from Louisville to the National Labor Relations Board,
4 you have not been asked by the government to do that?

5 A No, sir.

6 Q Let me ask you this: In your experience and your
7 background and also your knowledge and records, if we ask or
8 issue a subpoena now for all telephone calls made from
9 Louisville during a three month period to any Teamsters office
10 or Teamsters official, could you get those out for us?

11 A During?

12 Q Three months period, say, in 1962.

13 A 1962?

14 Q From October 1st through December.

15 A The retention of these records is one year, sir.

16 Q So the records, as far as we are concerned, would
17 be destroyed by the company now?

18 A Over and above what has been subpoenaed by the
19 government would have been, in all probability, destroyed,
20 that is right.

21 Q Those records are kept for one year, is that
22 correct?

23 A One year, that's right, sir.

24 Q Do you know when these particular records were
25 pulled from your record keeping system?

1 A Well, going strictly on memory it seems that the
2 records for these various accounts were subpoenaed in early
3 '63, but I am afraid I can't be more specific.

4 Q Well, that is perfectly all right. But for October,
5 1962, and November, 1962, this being 1964, any records that
6 you have not pulled out would be destroyed according to your
7 ordinary bookkeeping procedure.

8 A That is right, sir.

9 Q Do you know how they are destroyed, if I may
10 inquire?

11 A They are burned.

12 Q They are burned?

13 A Mutilated and burned.

14 Q You could find out the name of the person that
15 engages in the removal of the records and the disposal of
16 them through the burning process?

17 A Yes.

18 Q You could find that out for us.

19 MR. NEAL: I believe, Your Honor--

20 Q You state, will you state to me now--, excuse me,
21 go ahead.

22 MR. NEAL: I just started to say, Your Honor,
23 that Mr. Branstetter might--

24 MR. BRANSTETTER: (Interposing) If counsel wants,
25 if counsel wants to object to something, I address the Court.

1 MR. NEAL: Yes, I do object to the line of
2 testimony, Mr. Branstetter. We have shown Mr. Branstetter
3 the records he is asking this witness about, he has gone over
4 them or had an opportunity to go over them and they have
5 copies of them, the ones that he is wondering if he can
6 subpoena and get, he has seen.

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1 MR. BRANSTETTER: Now, if counsel wants to
2 testify as far as I know this is not totally true by any
3 means.

4 THE COURT: Well, let's proceed, gentlemen.

5 MR. BRANSTETTER: If counsel wants to testify,
6 may it please the Court, let him be put under oath. I didn't
7 say that.

8 BY MR. BRANSTETTER:

9 Q Did you pull all records out then at the govern-
10 ment's request, I will go back again, I'm leaning things.

11 A Did I personally pull them out, no.

12 Q I didn't say that. I want to keep you within
13 your proper contact and posture. I am not doing anything
14 except to see where we are. Do you know whether or not
15 records other than the ones you have presented here to counsel
16 were taken from your record-keeping system and turned over to
17 the government?

18 A Again I'm going on memory. I believe when the
19 records were subpoenaed the request was made for all message
20 cards.

21 Q Message cards?

22 A That is what these are. Records of long distance
23 messages.

24 Q And these were all that were produced as a result
25 of that as far as you know?

1 A No, I don't believe so. I believe the whole
2 account, sir, the whole billing to these various numbers was
3 turned over.

4 Q They asked for these numbers?

5 A Right.

6 Q And the billings to those specific numbers? In
7 other words, according to the request if it hadn't been a
8 call to the National Labor Relations Board in Washington they
9 did not request that number and you did not pull the records,
10 is that correct?

11 MR. NEAL: May it please the Court, Mr. Bran-
12 stetter is just off on a false premise here. He has seen
13 records every call charged to a particular credit card and
14 he has seen them and he had them shown to him.

15 MR. BRANSTETTER: Well, may it please the Court,
16 then if counsel says all records, we request they produce
17 them in court and have this witness go over them and designate
18 the number of calls that were made to the National Labor
19 Relations Board or other places.

20 THE COURT: Overruled, gentlemen. Let's proceed.

21 BY MR. BRANSTETTER:

22 Q You have with you today here in court only the
23 records that Mr. Neal or some government official told you
24 to bring here. Is that correct?

25 A That's right, sir.

1 Q The one-year period retention of records and
2 then their destruction is done pursuant to governmental
3 regulation?

4 A That's right, sir.

5 THE COURT: All right, is there anything further
6 of this witness at this time?

7 MR. BRANSTETTER: Could I be excused just a
8 moment, sir?

9 BY MR. BRANSTETTER:

10 Q Mr. Schneider, you don't know of your own knowl-
11 edge at all whether or not Mr. Hoffa lives at the place
12 designated on the map or whether or not he has lived there
13 for more than four years, do you?

14 A No, sir. The telephone record is in that name.

15 Q The telephone listed in his name at that address?

16 A Yes, sir.

17 Q Now, when a call is made either by cash from a
18 public pay booth or on a credit card a long distance call
19 a record is kept, is it not?

20 A Yes, sir.

21 Q And the fact that it is made the same type of
22 record would be kept if it were made from a hotel room,
23 would it not?

24 A Yes, sir.

25 Q Or if it were made from an office, would it not?

1 Q And you would be able to produce the same record
2 either from an office pay booth or hotel as to credit card?

3 A Some of these calls take on a different format.

4 Q But in this type of situation the records would
5 be just as complete?

6 A Yes, sir.

7 Q Do you know how many of the residences are listed
8 in this very VE exchange telephone numbers? VE 4 or VE 5
9 that you have testified to?

10 A It would strictly be a guess.

11 Q You have in your business relationship, you
12 would have--

13 A Those are probably 10,000 line offices or very
14 close.

15 Q When a call is made either by depositing coins
16 in a public pay booth or by credit card, the pay booth number
17 is as such, is it given by the person making first the credit
18 card, take it that way?

19 A The pay station number is requested, that's right,
20 sir.

21 Q It is requested?

22 A Yes, sir.

23 Q When a credit card call is made?

24 A Yes, sir.

25 Q And then you have a record of it, right?

1 A However, only the central office designation is
2 shown.

3 THE COURT: Anything further on this witness?

4 MR. BRANSTETTER: We will reserve further cross-
5 examination based upon the Court's ruling previously on this,
6 that there is going to be more testimony from this witness.

7 THE COURT: All right. May this witness be
8 excused at this time?

9 MR. NEAL: Just one moment here, your Honor. I
10 wanted to ask him something else, if your Honor please.

11 REDIRECT EXAMINATION

12 BY MR. NEAL:

13 Q Shown on your Government's Exhibit No. 41, which
14 has been identified and testified heretofore as two calls
15 from Mary K. Reeves' place in Detroit to Nashville, Tennessee,
16 CYpress 1-8644 on November 1 and November 2, 1962, did you
17 give us the time and duration of those calls? There may be
18 some question about interpreting, that is the reason I want
19 you to testify about that.

20 A The first one was a direct dial call made on
21 November 1 to Nashville, CY 1-8644. It was a one-minute call.
22 It was made at 8:57 P.M.

23 The second one was a November 2nd direct distance
24 dial call to the same Nashville number. It was a 2-minute
25 call and was made at 8:11 A.M.

1 Q 8:11 A.M.?

2 A Right, sir.

3 Q Then apparently they are using--

4 MR. BRANSTETTER: May it please the Court,
5 apparently what they are doing, I don't think government
6 counsel should testify.

7 MR. NEAL: I beg your pardon.

8 THE COURT: Sustained.

9 BY MR. NEAL:

10 Q I see 8:57, when you said--

11 A Direct distance dial, we use the 24-hour clock
12 military time.

13 Q Mr. Schneider, do you know whether or not the
14 government subpoenaed all of the records Mr. Branstetter was
15 talking about and whether they are back here?

16 A I am going somewhat on memory but if I recall
17 correctly all the records were subpoenaed for given bills.

18 Q You wouldn't recall whether or not they have been
19 turned over to defense counsel?

20 A That I don't know.

21 MR. BRANSTETTER: May it please the Court, I
22 think counsel--

23 RECROSS EXAMINATION

24 BY MR. BRANSTETTER:

25 Q You don't even recall what was subpoenaed now of

1 your own knowledge?

2 A Of my own knowledge, no, sir. I remember the
3 subpoena.

4 Q Would you check, please, Exhibit No. 41 and state
5 whether or not that is a part of a bill, all of a bill or if
6 there had been other toll charges on the same month would
7 they have shown on this bill or some other statement?

8 A They would have shown on this bill. This is a
9 toll statement that accompanied the bill. This would be the
10 total amount and number of calls billed on the November, 1962,
11 bill.

12 Q And those were made the 1st and 2nd, I believe,
13 of November?

14 A That's right, sir.

15 Q Now, do you know where Northville State Hospital
16 is in Michigan?

17 A Northville State Hospital?

18 Q Yes.

19 A The general locale, yes, sir.

20 Q How far is it--would a call from Detroit to
21 Northville State Mental Institution, would it be a toll
22 charge, long distance call?

23 A That would be what we call an inter-zone call,
24 sir.

25 Q Would it be a toll charge, would it show up?

1 A Not as such.

2 Q Not as such on the bill?

3 A That's right.

4 Q From Detroit, from Inkster?

5 A From Inkster.

6 Q From Detroit?

7 A Well, Detroit is segregated into exchange areas
8 and it is dependent on the unit structure from Inkster to
9 Northville would be no doubt charged in what we call units
10 which is predicated on time talked and distance.

11 Q How could we check on, you say, inter-exchange
12 calling system, would your records show any method of
13 determining the time and the number of calls, say, over a
14 3-months period from an exchange in Detroit to Northville
15 State Hospital?

16 A If they were not toll calls. If they were these
17 inter-zone units were are speaking of, no, sir, we could not.

18 Q But if they were toll calls?

19 A If they were toll calls we could.

20 MR. NEAL: Your Honor, on those questions that
21 we wanted to pursue--

22 THE COURT: Have the witness remain available
23 and we will recess around 11 normally at any rate and take
24 it up at that time.

25 MR. NEAL: Your Honor, our next witness depends

1 upon that to some extent.

2 THE COURT: All right, ladies and gentlemen,
3 step out a moment, please.

4 (Thereupon, the jury of 12 and 4 alternates were
5 excluded from the courtroom and the following proceedings
6 were had, to-wit:)

7 BY MR. NEAL:

8 Q Mr. Schneider, before you said you were familiar
9 with the procedure of operators placing calls because you
10 have worked in that respect, is that correct?

11 A Yes, sir.

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1 Q And that you are familiar with the procedure on
2 making calls and so forth?

3 A Yes, sir.

4 Q You worked in that for sixteen years?

5 A At various times.

6 Q Now, I'd like to ask you on the first two calls
7 we talked about. First, I'd like to ask you your opinion as
8 to whether those first two calls were made by the same person
9 and then to explain how you arrive at that opinion and look,
10 just a moment, let me get --

11 MR. HAGGERTY: (Interposing) May it please the
12 Court, I object to that question. I think we are getting
13 into the realm of conjecture at this time.

14 THE COURT: Well, this is in the absence of the
15 jury, gentlemen.

16 BY MR. NEAL:

17 Q I am going to give you the first two now and
18 you tell me whether, in your opinion, they are made by the
19 same person and then explain how you arrived at that opinion.

20 MR. HAGGERTY: Your Honor, I object to his
21 opinion. There is no qualification, there is no foundation
22 of this man's qualifications to answer a question of this
23 type that in his opinion, then I would say further that opinion
24 evidence would not control under these circumstances.

25 THE COURT: All right. Well, gentlemen, let's

1 reserve your exceptions until the end. This is all in the
2 absence of the jury.

3 Q (By Mr. Neal) All right, sir, would you give us
4 your answer?

5 THE COURT: What exhibits are you referring to?

6 THE WITNESS: These are 46 and 47.

7 THE COURT: All right.

8 A It is highly probable they were made by the same
9 person.

10 Q Is that your opinion?

11 A Yes, sir.

12 Q Now, would you tell us how you arrived at that?

13 A Because of the timing, the close timing of them,
14 the fact they were handled by the same operator. These, if
15 you will recall, were made from the Vermont 5 exchange. There
16 were twelve operators on duty at that early hour in the
17 morning, so you stand a ratio of 12 to 1 chance.

18 THE COURT: All right.

19 Q (By Mr. Neal) And they were made, they were
20 charged to the same credit card?

21 A Yes, sir.

22 Q Made from the same operator?

23 A Right, sir.

24 Q A VE 5 exchange?

25 A That's right.

1 Q And followed one right after the other?

2 A Right after the other.

3 Q Is that the basis on which you make your decision?

4 A That's right, sir.

5 Q And you say, in your opinion, that --

6 MR. BRANSTETTER: (Interposing) Could counsel
7 come back here, may it please the Court, and keep -- we
8 object --

9 MR. NEAL: (Interposing) All right, very well.

10 BY MR. NEAL:

11 Q In your opinion, they were made by the same
12 person based on all those facts, is that correct?

13 A That would be my opinion, sir.

14 Q Now, take the next three calls.

15 THE COURT: Now, with regard to those cards the
16 Court is going to sustain the objection where he has given
17 his opinion, if that is the basis on which it is given.

18 Do you have others you wish to pursue along the
19 same line?

20 MR. NEAL: Well, I will ask him about these, your
21 Honor, but I believe it will probably be the same basis on
22 which the opinion is made.

23 MR. HAGGERTY: I have the same objection, may it
24 please the Court.

25 BY MR. NEAL:

1 Q Would you take those three calls and tell me
2 whether or not all three calls were made by the same person?

3 THE COURT: What exhibits are you referring to
4 now?

5 THE WITNESS: These, sir, are 48, 49, and 50.
6 It would be my opinion that they were made by the same party.

7 Q (By Mr. Neal) And what would you base that
8 opinion upon?

9 A Based on the closeness of the calls.

10 Q In time, you mean?

11 A The time.

12 Q Sequence of the calls?

13 A That's right, the sequence of the calls and the
14 fact that they are charged to the same credit card and the
15 fact they were handled by the same operator and the fact that
16 at this hour in the afternoon there are twenty-two operators
17 on the board, the probability, the mathematical probability
18 of the same operator handling a call for a different party
19 in this sequence would be about 22 to 1.

20 Q How do you get the operator back after you place
21 one of these calls?

22 A On a coin station the usual practice is they
23 flash the operator.

24 Q Flash the operator?

25 A Right.

1 Q And that would give you the same operator?

2 A That would give you the same operator.

3 MR. NEAL: Your Honor, this seems to me to be
4 within the realm of beyond reasonable doubt with respect to
5 opinion. I think, of course, the jury can accept this or
6 reject it, but it seems to me we have a man qualified here to
7 give his opinion. Opinion evidence is clearly admissible
8 it seems to me, not only relevant but probative.

9 MR. HAGGERTY: May it please the Court --

10 THE COURT: (Interposing) They are reasoning
11 processes that the jury can follow themselves if they think
12 it is proper to do so. I sustain the objection.

13 MR. NEAL: Well, they can't follow them unless
14 we give them to them, your Honor, we haven't brought these
15 things out yet because we are simply going to wait to get
16 his opinion and then to explain it.

17 MR. HAGGERTY: That's argument.

18 THE COURT: Sustain the objection.

19 MR. BRANSTETTER: Now, may it please the Court,
20 since the Court has sustained the objection and since I know
21 Mr. Neal and how this case is proceeding, we would like
22 instruction of the Court to Mr. Neal that he not argue or
23 mention this matter to the jury in that respect.

24 MR. NEAL: May it please the Court --

25 THE COURT: (Interposing) Gentlemen, I am --

1 MR. NEAL: (Interposing) We can certainly argue --

2 THE COURT: (Interposing) There will be no
3 argument to the jury during the trial of this case until it
4 is appropriate for argument. At the time of argument, we
5 will have to pass upon what is counted argument and what is
6 not.

7 MR. NEAL: May we bring the jury back and question
8 this man, bring out the facts he has just made?

9 THE COURT: Those facts, I think, are already in
10 the record, the time sequence of the calls is in the record,
11 the fact that the same operator answered is in the record,
12 the fact it was from a coin phone at the same exchange number
13 is in the record.

14 MR. NEAL: That will be all we have of the
15 witness.

16 THE COURT: All right.

17 MR. HAGGERTY: May we have our recess at this
18 time, your Honor?

19 (Witness temporarily excused.)

20 THE COURT: All right. Take a ten-minute recess.

21 (Thereupon, a recess was had.)
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1 (Thereupon, pursuant to adjournment for recess
2 court was in session.)

3 MR. BRANSTETTER: Could we request that Mr.
4 Schneider be asked about three more questions?

5 THE COURT: All right, have Mr. Schneider return.

6 MARSHAL MANSFIELD: Mr. Schneider has left the
7 building, Your Honor.

8 THE COURT: Well, see if he can be located and
9 asked to return immediately after the noon recess at
10 one-thirty. See if he can be available at one-thirty. All
11 right.

12 MR. NEAL: I guess we told him to go on, Your
13 Honor. There was no indication of any reservation by anyone.

14 MR. BRANSTETTER: I don't want to argue the point
15 but I stated that I was reserving further examination.

16 MR. NEAL: Of course, we'll get him back if the
17 Court please.

18 THE COURT: All right.

19 MR. NEAL: The government calls Mr. James A.
20 Durkin.

21 JAMES A. DURKIN,
22 a witness called at the instance of the United States of
23 America, having first been duly sworn, was examined and
24 testified as follows:
25

DIRECT EXAMINATION

BY MR. NEAL:

Q Would you state your name, please?

A James A. Durkin.

Q Mr. Durkin, by whom are you employed?

A Department of Justice.

Q How long have you been employed by the Department of Justice?

A Since January, 1962.

Q What did you do prior to that, Mr. Durkin?

A I was engaged in the private practice of law in Rockford, Illinois.

Q And before that?

A Before that I was law clerk to Judge Parkinson in the Seventh Circuit Court of Appeals in Chicago, Illinois.

Q Law clerk?

A Yes.

Q Now, Mr. Durkin, are you familiar with the telephone records that have been introduced in this case?

A I am.

Q And based on the telephone records that are now in evidence have you prepared a chart of the various telephone calls?

A I have.

Q Have you prepared this yourself?

1 A Yes, sir, I have.

2 Q And have you checked this chart that you have
3 prepared against the exhibits that have been received in
4 evidence?

5 A I have.

6 Q And have you ascertained that the telephone calls
7 you have made are based on exhibits in evidence in this case?

8 A They are.

9 MR. NEAL: Your Honor, we ask permission to show
10 and explain a chart of telephone calls that we've been putting
11 on. I have the chart against the wall so that the jury will
12 not see it until the Court gives us permission.

13 MR. HAGGERTY: May it please the Court, at this
14 time on behalf of the Defendant Hoffa I object to any chart
15 predicated upon testimony which has already been submitted to
16 the jury and entered in the record. I see no basis. I see
17 no need. I see no reason for a chart at this time.

18 MR. NEAL: May it please the Court, we have a
19 memorandum of law on this for the Court which is the law and
20 the precedents, under the law and under the precedents we are
21 clearly entitled to make these telephone calls meaningful
22 for the jury by showing it in chart form. There is just no
23 question about it. We have made the chart based on the
24 exhibits in evidence. Mr. Durkin is prepared to show which
25 call is based upon which exhibit in evidence and so forth.

1 MR. HAGGERTY: Now, may it please the Court, with
2 reference to and I speak only at this time for the Defendant
3 Hoffa, there is no testimony connecting up phone calls to
4 the Defendant Hoffa or from the Defendant Hoffa to anyone
5 else. Therefore, I say at this time any such chart is
6 unnecessary, it is highly prejudicial and there is no reason
7 for it. After all, the juror is the sole judge of the facts.
8 All that a chart would do at this time would doubly accentuate
9 the proof that the government is offering which is unnecessary
10 and highly prejudicial. And further, I wish to add that
11 the testimony that has been produced here is from records and
12 without personal knowledge of the witnesses who testified.

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1 MR. SILETS: Your Honor, I'd like to have --

2 MR. HAGGERTY: (Interposing) And there is no
3 evidence, no positive evidence in this record as to who made
4 the record, who made the calls and who received the calls.

5 MR. NEAL: Your Honor, that is just not -- that is
6 not entirely accurate, but I don't want to argue the case
7 in front of the jury.

8 MR. SILETS: May I --

9 MR. NEAL: (Interposing) I submit the law is
10 clear.

11 MR. SILETS: May I be heard, your Honor?

12 THE COURT: Yes.

13 MR. SILETS: First, I'd like to make two points.
14 If the chart is improper to expose it to the jury prior to
15 the time the Court rules, it would be wrong, it would be
16 unfair to the defendants, so no matter how the Court rules I
17 think the jury would be excused so that we may examine the
18 chart in advance of that.

19 THE COURT: All right.

20 MR. SILETS: Secondly --

21 THE COURT: (Interposing) All right. It will be
22 necessary then to ask the jury to step out.

23 (Thereupon, the jury of twelve and four alternates
24 were excluded from the courtroom and in their absence the
25 following proceedings were had, to-wit:)

1 MARSHAL MANSFIELD: Court is still in session.

2 Please be quiet.

3 MR. SILETS: Your Honor, I'd like to cite to the
4 Court the case of United States versus Altruda, 224 Fed. 2nd,
5 935, a Second Circuit case.

6 THE COURT: What was the citation, 224 Federal?

7 MR. SILETS: 224 Federal 2nd, 935, a Second
8 Circuit case.

9 Now, the very purpose for which this chart is
10 being offered, your Honor, is not to assist the jury but to
11 connect up what is seemingly isolated phone calls and to
12 show some continuity and some plan or scheme.

13 Now, this very device was struck down by the
14 Second Circuit in this case for that very same purpose. I
15 believe that is a tax evasion case.

16 The ultimate purpose of the graphic device, that
17 is, the chart, was to show some line, some continuity, so that
18 the jury would take isolated events, put them all together,
19 and say, "We have a complete picture which we will use against
20 these people."

21 That is what this is being offered for and that
22 strikes at the very heart of the objection I have been making
23 right along that there is no plan, there is no scheme, and
24 to use these phone calls against Mr. Dorfman in the presence
25 of the jury when he is not charged in these counts and now to

1 bring in some exposition, some large document created by a
2 government attorney drawing together all of these isolated
3 events, that is clearly prejudicial and I am going to move,
4 without even having seen this document, to ask the Court not
5 to allow it in evidence.

6 If the Court should rule against me, I would like
7 to have the opportunity to examine it in detail, compare it
8 to the transcript to see that it fairly reflects what the
9 evidence is and that it does not contain argument or state-
10 ments or misleading inferences which are not contained in the
11 record.

12 THE COURT: All right.

13 MR. BRANSTETTER: May it please the Court, we
14 handed to the Court earlier and the Court ruled that this
15 sort of highly speculative evidence that established nothing
16 in and of itself would be admitted and I understood admitted
17 only preliminarily subject to the government in some manner
18 showing who made calls, who received calls, or if they have
19 information as to what was said in those calls that they then
20 produce it in court or have it excluded on objection.

21 Now, I know of no case where -- and I think the
22 memo that the government just this moment submitted, designates
23 a case where phone calls or matters of this sort may be used
24 in this manner. I have not had an opportunity to read it or
25 analyze it.

1 This further demonstrates, may it please the
2 Court, the procedure in this case to come up after the jury
3 has come back in to the box, bring in a large piece of paper,
4 say, "We want to show to the jury so that we can get some
5 information before the jury even before the Court has ruled
6 on it."

7 The procedure is not subject to commendation,
8 really, either, or the handing to us of a brief at this
9 point that has been prepared weeks ago is not commendable,
10 it's not helpful to the Court.

11 These defendants regardless, any defendant,
12 certainly is entitled to the totality of due process and our
13 government shouldn't do it this way. It is not right, it's
14 not just.

15 Let me suggest this further, this can't be used
16 and I haven't seen it either at this time, to have someone
17 come in and say, "We are going to show, connecting up tele-
18 phone calls." All the records are here. There is a witness
19 that is to be recalled. This chart, I assume that it will
20 deal with telephone calls, because that is what I am going to
21 ask him about. So if this chart was made up, and apparently
22 it was some days or weeks, maybe months ago, certainly I
23 don't think it could conceivably be related to the testimony
24 that has been introduced by documents here and several
25 instances, a goodly amount of it excluded, the Court did not

1 permit it.

2 Now, I know that those are matters that might
3 be properly directed to the witness on a preliminary voir
4 dire to determine this, but I don't think it should certainly
5 be done in front of the jury nor should it be done at all.

6 The case in Washington, D. C., I don't recall the
7 name, decided the 24th of this month, it seems to me, may it -

8 THE COURT: (Interposing) You talking about the
9 Laughlin case?

10 MR. BRANSTETTER: It's good law to state that a
11 telephone call was made from one station to another station,
12 it shows nothing. The government itself knows that this is
13 nothing better. It rises not one inch, not one part of an
14 inch, above pure speculation and the defendants' rights,
15 whoever they may be, whatever their station in life may be,
16 whatever the attitude of the public toward them, should never
17 be affected or determined or in any manner judged on that sort
18 of evidence.

Tk 11 End

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1 MR. NEAL: May it please the Court, the procedure
2 used by the government which Mr. Branstetter said is not
3 worthy of commentation is the procedure of putting a witness
4 on the stand and testifying what we want to do, bring a
5 chart in with its back to the Court. I don't think any
6 procedure could be fairer. Now, as for Mr. Silets case,
7 Your Honor, I ask Your Honor to look at that case. It has
8 nothing to do with charts. United States versus Altruda.
9 It is 224 F 2d 935 as I remember. It has nothing whatever
10 to do with charts. We cited Sixth Circuit cases. A chart
11 can be used to summarize evidence. To make evidence
12 meaningful for the jury. There is just no question about
13 that. If Your Honor will look at those cases.

14 Now, as for us having a brief weeks ago and
15 not presenting it until now, that is just not true. We tried
16 to present to the Court memoranda as they come along and we
17 have presented to the Court memoranda at the pre-trial
18 conference on some questions we thought would be raised.
19 Defendants submitted nothing. We have attempted to have law,
20 to have precedent for our propositions because after all we
21 are as desirous that no error be committed by the Court as
22 the Court is desirous of that effect and we would not offer
23 anything in our judgment that would be error. Of course, it
24 is the Court's judgment that counts and we are not attempting
25 to substitute it.

1 MR. SILETS: Your Honor, Mr. Neal may be correct.
2 I had a list of citations. It could be the case that I was
3 referring to is Elder versus United States, 213 Fed. 2d at
4 876 and if I made the error, I haven't seen these cases in a
5 long time, I apologize to the Court.

6 MR. NEAL: I'm sure that Mr. Silets would not
7 mis-cite a case intentionally. It may be Elder. I think
8 it probably is Elder.

9 We refer to Elder, Your Honor, in our brief and
10 we distinguish Elder. It is clearly distinguishable. I'm
11 sure it was Elder that Mr. Silets was referring to and in-
12 advertently said Altruda. We think the chart, we will be
13 happy to turn the chart around for the Court's perusal.

14 Now, what has happened here if it please the Court
15 is this, we have established a call from the Mattie Mix
16 residence in Nashville, Tennessee to which the defendant was
17 there morning and evening on a daily basis as the record
18 shows.

19 MR. SCHIFFER: Objected to.

20 MR. NEAL: We're not in the presence of the jury,
21 Mr. Silets. You can say anything you want to.

22 MR. SILETS: That was Mr. Schiffer, Mr. Neal.

23 MR. NEAL: I apologize, Mr. Silets. Mr. Schiffer,
24 you can say anything you want to.

25 MR. SILETS: He is not the one to apologize. It

1 is an honor to be called Mr. Schiffer.

2 THE COURT: Gentlemen, address your remarks to
3 the Court. Do not address remarks back and forth to counsel.

4 MR. NEAL: All I'm saying, Your Honor, is my
5 memory of the record. I'd be happy for Mr. Schiffer to state
6 what his memory is of the record. My memory of the record
7 is this, Your Honor, there was a clear evidence of an
8 approach made, improper approach made by Parks to Carl
9 Fields with an offer of \$5,000 for him and \$5,000 for his
10 father if he would talk to his father about acquittal, voting
11 for acquittal in the Hoffa case.

12 Now, that has been the evidence. That the same
13 Parks induced Jack Walker to approach Mattie Leath with
14 improper proposition that she find out what her father was
15 wearing to court the next day so that someone could be told
16 and a contact could be made.

17 There was also evidence by Jack Walker or Carl
18 Fields, one of the two. No, it was Carl Fields, Your Honor.

19 Carl Fields said that Parks told him that he had
20 to know because he had to call Louisville. Tell Louisville.
21 Now we have a call in the record here from the Mattie Mix
22 residence to the Brown's Guest House pay phone in Louisville,
23 Kentucky.

24 Now, the Mattie Mix residence is the residence of
25 Parks, he was there day and night admittedly there day and

1 night at least testimony there day and night. Residence to
2 which Parks had the key. No one else was living there and
3 Mattie Mix finally agreed that the children had left or the
4 students at school had left. We have this call from Mattie
5 Mix residence. She did not make the call. Harris did not
6 make the call. And the only one having a key was the milkman
7 or someone like that.

8 Mattie Mix residence called to Brown's Guest
9 House where the Defendant Campbell was staying. Mattie Mix
10 testified the calls were made on that pay phone. Now we have
11 a series of calls, Your Honor, from three or four pay phones,
12 phone booths around Louisville to the Mattie Mix residence.
13 To the Mattie Mix residence, Your Honor. And we have established
14 meticulously by pictures and testimony of witnesses that these
15 very phone booths are the booths that were being used by the
16 Defendant Campbell to make calls. During this period of
17 time, Your Honor. During this period of time.

18 And what do we find when we go to these particular
19 phone booths. We find calls, a series of calls to the
20 Mattie Mix residence in Nashville.

21 Now, was Campbell making these calls? Well,
22 clearly the inference is that he was making these calls
23 because he was using these telephone booths to make long
24 distance calls.

25 What else is available to show that he was making

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Tk 12

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1 these calls? Ernestine Williams testified that Campbell told
2 her he made calls, the calls to the Mattie Mix residence
3 that was charged on her telephone bill.

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1 So clearly he was at Ernestine Williams' house
2 and did make calls to the Mattie Mix residence were on her
3 bill and were made by the Defendant Campbell. So we have the
4 clear inference, your Honor, and the jury is entitled to take
5 it, that Campbell was making these calls.

6 Now, we did not, we prepared a chart that listed
7 all of these calls as between Thomas Parks and Larry Campbell,
8 and we put Thomas calls and Campbell calls.

9 Campbell calls to Larry Parks. We thought that
10 was somewhat argumentative so we will just put the person on
11 there except where the witnesses have testified they made the
12 calls on the chart. We will just put pay phone Mattie Mix
13 residence, although in my humble judgment, your Honor, we
14 would be entitled to show those calls as between Tom Parks
15 and Larry Campbell on the chart.

16 But we haven't done it. We think your Honor that
17 there is just no question about the admissibility of this
18 chart and we will show it to the Court for the Court's
19 perusal.

20 MR. SCHIFFER: May I on behalf of Mr. Parks
21 address the Court?

22 MR. NEAL: Mary Reeves also testified that Larry
23 Campbell paid the bill.

24 THE COURT: All right, Mr. Schiffer.

25 MR. SCHIFFER: Continuing with what Mr. Neal's

1 recollection of the evidence is, your Honor, I must say he
2 is completely in error. Mrs. Mix testified so far as her own
3 phone was concerned in Nashville, that there are so many
4 people using this telephone who she did not even know,
5 evidently people that resided in the area or passing through
6 use her phone. She was not at home all the time. And as a
7 matter of fact, she said even the milkman and others use
8 the phone. Now, as of this time, may I respectfully suggest
9 to the Court we could have this testimony very recently about
10 these telephone calls.

11 I am going to make a motion that until the
12 government can connect by some evidence that Larry Campbell
13 actually called and spoke with Mr. Parks, or that Mr. Parks
14 actually called and spoke with Mr. Campbell, that all the
15 evidence submitted by the government up to this point be
16 excluded and taken away from consideration by the jury.

17 It is all right for the government on the one
18 hand to say while we have a whole lot of telephone calls
19 between one party or at least between one number and another
20 number --

21 THE COURT: (Interposing) Mr. Schiffer, one
22 motion at a time before the Court, please. The Court will
23 overrule your motion to exclude all testimony.

24 MR. SCHIFFER: Then I respectfully amend that
25 motion to include the telephone indentifications by the

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1 telephone people and all the other testimony given by any
2 other witness which does not identify the particular parties
3 Campbell and Parks as actually having spoken with each other
4 on these telephone calls.

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THE COURT: Overrule your amended motion.

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1 MR. SCHIFFER: Insofar as the chart is concerned,
2 your Honor, since up to this time the government has not
3 succeeded as a matter of law in identifying the subject
4 matter of these telephone calls, if the telephone calls had
5 actually been completed by and between Larry Campbell and
6 Mr. Parks, then certainly as of this time, since there has
7 been no such identification, that the chart would become
8 highly prejudicial as to Mr. Parks in this case because until
9 this jury is told by evidence from the witness stand by the
10 government that Parks actually spoke with Mr. Campbell or
11 someone else as to any of the telephone calls which have been
12 referred to thus far in the evidence by the government, that
13 this chart be excluded, at least until such time as the
14 government offers that proof for consideration by the Court,
15 first as a matter of law and that the Court at this time, in
16 all fairness to the defendants, exclude this chart certainly
17 as of this time.

18 THE COURT: All right.

19 MR. NEAL: Your Honor.

20 MR. BRANSTETTER: I would like to--

21 THE COURT: (Interposing) Let's hear from the
22 defense counsel further. Do you have any further authority?
23 If you can cite authority to the Court I would appreciate it.

24 MR. BRANSTETTER: In the case of Lloyd vs. United
25 States, 226 Federal 2d, at Page 9, specifically on Page 17,

1 the Court states thusly, "Whenever possible such charts
2 should be confined in their preparation to strictly mathe-
3 matical computations subject to detailed explanation upon
4 the trial by the testimony of expert government witnesses
5 and they should not be encumbered by such expressions or
6 conclusionary captions as 'overstatements of merchandise
7 purchased', and a number of other items."

8 May it please the Court, I certainly have not
9 had an opportunity to research this matter but, as I under-
10 stand this type of procedure, it's always necessary in this
11 sort of thing to bring in and to collate the evidence, so
12 to speak, by supposed experts in the field.

13 Now, I don't know if Mr. Durkin is an expert in
14 any field except possibly in the field of law, and we have
15 had some disagreements on whether or not he is an expert in
16 that.

17 MR. NEAL: Or whether you are an expert.

18 THE COURT: Well, all right. Gentlemen, any
19 other authority you wish to cite to the Court?

20 MR. NEAL: May I just say one thing to the Court?
21 Your Honor, we are not putting on this chart to show the
22 substance of the telephone communications and I would also
23 say this, your Honor, the case just cited, the Lloyd case,
24 is also cited in our brief. We put in our brief all of the
25 cases, your Honor, that we thought were on the point, whether

1 they are for us or against us.

2 Now, as far as the Lloyd case is concerned, the
3 Court in the Fifth Circuit there was concerned, and I am
4 quoting, with, "Impressive conclusionary captions."

5 Well, the caption of our chart, your Honor, is
6 "Chart of telephone calls." Hardly impressive, hardly con-
7 clusionary in any event and, as far as Mr. Durkin being an
8 expert, I would submit that after working with these telephone
9 bills he is an expert but, in any event, and in any event it
10 requires no experts for what he has done. Would the Court
11 like to see the chart?

12 THE COURT: No, there is no purpose in the Court
13 looking at the chart until the Court has had an opportunity
14 to examine the authorities. If the Court concludes the chart
15 would be permissible then the Court would examine the
16 particular chart to determine whether it would qualify.

17 I will have to reserve this obviously, gentlemen,
18 until I have had an opportunity to look at some of the
19 authorities. I will do that during the noon recess and you
20 can take this matter up then again at 1:30.

21 Yes, Mr. Haggerty.

22 MR. HAGGERTY: May I suggest first of all, your
23 Honor, that we have an opportunity to research and submit
24 authorities to the Court. We are taken by surprise. It was
25 beyond my comprehension that they would attempt to use a

1 chart on a matter of this kind for the reason that there is
2 only one day's phone calls that are in any way pertinent in
3 this matter and on that day, if your Honor remembers the
4 testimony, as the jury undoubtedly did, Carl Fields talked
5 with Walker and Parks in one afternoon and one evening, first
6 with Walker then with Parks, then Walker talked to Parks on
7 the phone that evening, Fields talked to Parks from his
8 mother's home, that is, Carl Fields. Fields says he never
9 talked to Parks or Walker after that.

10 Now, the only thing that transpired after that
11 was that Carl Fields told Parks, based on the testimony that
12 his father would have nothing to do with it, his father wasn't
13 that kind of a man, and asked if he should return the money.
14 It all happened in one day.

15 Now, the only thing that happened subsequent to
16 that time was Walker's luncheon with Mattie Leath wherein
17 Mattie Leath would not listen and he did not press the subject.

18 Now, that is all the developments from the testi-
19 mony in Nashville.

20 Now, to put in records, to put in records in this
21 Count 3 as they have done covering an extensive period of
22 time where there is no testimony in chief as to any activity
23 in furtherance of an understanding, agency or conspiracy,
24 certainly they have no application and I would say that before
25 you consider this on the chart that there will be a motion at

1 the proper time to strike certain of this testimony, certain
2 of these records.

3 Now, further it is my recollection that a chart
4 is only permissible to assist the jury in understanding other-
5 wise confusing and complex facts. Now, I don't believe we
6 have any situation here that is of confusing and complex
7 facts. They are rather simple facts for a jury to under-
8 stand. They are simply documentary evidence offered and from
9 that documentary evidence that has been offered there has
10 been testimony of the employees of the various telephone
11 companies and that is all that is in the record at this time.

End Tk 132
Tk 13A fls.

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1 MR. NEAL: I point out there have been a number
2 of records here and I heard Mr. Branstetter on television
3 last night say there had been quite an accumulation and
4 something to the effect that he didn't understand the
5 significance. I think he may have been a little less than
6 candid that he didn't understand its significance but he
7 did point out there had been an accumulation, Your Honor.
8 We think it is pertinent to the case. I won't go into
9 argument. Our brief sets this out and we think it's quite
10 clear.

11 MR. BRANSTETTER: May it please the Court.

12 THE COURT: All right.

13 MR. NEAL: I would say this, Your Honor--

14 MR. BRANSTETTER: (Interposing) I thought you
15 were finished.

16 MR. NEAL: I was going to say--

17 MR. BRANSTETTER: (Interposing) I want to be
18 heard when he finishes.

19 MR. NEAL: Tentatively we are going to leave
20 count three at the present time and go to count four.

21 THE COURT: All right.

22 MR. NEAL: There will be some more proof on
23 count three but it's not in the order to be put in right now.

24 THE COURT: All right.

25 MR. NEAL: It will.

1 MR. BRANSTETTER: May it please the Court, with
2 reference to Mr. Neal's testimony on the television aspect
3 I was responding to his the evening before.

4 MARSHAL MANSFIELD: Let's have order in the
5 court, please.

6 MR. BRANSTETTER: I would like to suggest this,
7 too, as a method of testing this proposition. Suppose after
8 seeing the record and we have prepared some of this already,
9 that a motion is made to strike a portion of this evidence and
10 it is stricken, suppose the Court were to rule with some or
11 all of the defendants and strike some of this evidence, then
12 we would not have made the grave error and committed the
13 grave injustice by saying, "We are connecting it all together,"
14 although the Court may later strike it.

15 THE COURT: All right.

16 MR. NEAL: May I say one thing in that regard,
17 Your Honor. I'm sorry to take the Court's time but some
18 future, possible remote vague motion to strike cannot prevent
19 the government from putting on its case as it sees best if
20 the Court agrees with the admissibility.

21 In Nashville in the last case they moved to
22 strike everything at the close of the case. Of course, Judge
23 Miller denied it all but they have got a motion to strike
24 and they will move to strike everything when we get through,
25 so that can't affect the admissibility of this.

1 We do hope, Your Honor, earnestly that we will go
2 on until the noon recess but we would like to come back to
3 this chart as quickly as possible to make it meaningful in
4 view of the evidence that has gone on because we are going
5 to drop this temporarily and go to something else.

6 It might be adviseable that Your Honor look at
7 the chart now and see what you have in mind, what a non-
8 inflammatory chart we have got here, but that will be with
9 Your Honor's decision.

10 THE COURT: All right. Let's see the chart then
11 and see what we are talking about.

12 (The chart referred to above was mounted.)

13 THE COURT: Well, I will have to--

14 MR. NEAL: (Interposing) Can I pass up to Your
15 Honor a hand copy of the same chart?

16 MR. SILETS: May I indicate for the record this
17 is to assist the jury?

18 THE COURT: I think I am going to take it under
19 advisement, gentlemen. Let's move on to something else.

20 MR. SILETS: May it please the Court, if we are
21 going to move on could we have an understanding that the
22 entire chart is removed from the courtroom?

23 THE COURT: All right. Remove the chart, yes.

24 MR. BRANSTETTER: May it please the Court, could
25 we have a further understanding that the government has

1 either elected or chosen to proceed--

2 THE COURT: (Interposing) Take the chart out this
3 way, gentlemen, take the chart out this way.

4 (Thereupon, the chart referred to above was
5 removed from the courtroom.)

6 MR. BRANSTETTER: Might we also have an under-
7 standing that the government has either elected or decided
8 to proceed on count three and that this count three then is
9 concluded with the exception of the Court's determination on
10 this?

11 MR. NEAL: No, certainly not.

12 THE COURT: All right.

13 MR. BRANSTETTER: Then we again move the Court to
14 require the government to elect and complete with this one
15 exception, I want to be fair, of the chart, their proof on
16 the count that they are and have been moving on since the
17 proof began.

18 THE COURT: Overruled.

19 MR. BRANSTETTER: It's only this way.

20 MR. SILETS: If Your Honor please, may I be
21 heard? They are moving on to count four and now for the
22 first time we are getting into what may be of importance to
23 my client.

24 Up until this time I haven't heard a word where
25 Mr. Dorfman is involved.

1 Now, just a moment ago apparently I have been
2 handed a sheath of Jencks statements. I have here in front
3 of me a briefcase relating to my investigation of the
4 supposedly one main witness that will testify against Mr.
5 Dorfman.

6 I think I ought to have, as the statute says,
7 a reasonable time to go through this voluminous, and I might
8 say for the record there is conceivably fifty pages of Jencks
9 statements here.

End
Tk 13A

Tk 14
follows

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TK 14
EW 1

Durkin - Direct

2203

1 And compare that to my investigation and to my
2 analysis of this case. Now, I can't conceivably do this over
3 the lunch hour. The jury has a hard enough time by just
4 going out to eat and coming back in time for the Court. I
5 can't do this and I'm not going to--I hope the Court isn't
6 going to expect me to do this in the space of ten minutes or
7 five minutes. It is inconceivable because this is the very
8 first time after two weeks, almost two weeks being here be-
9 fore your Honor, it has been a pleasure, almost after two
10 weeks of being here that we are coming to something that
11 pertains to my client. Now, I only ask for what is reason-
12 able. I don't see how I can do this in less than an after-
13 noon.

14 THE COURT: Let's take up one thing at a time,
15 gentlemen. The motion by Mr. Branstetter to require the
16 government to proceed in regard to any particular count at
17 a time or particular order is overruled.

18 The request of Mr. Silets will be overruled at
19 this time. It is not appropriate for the Court to rule upon
20 the time that it may take to consider such statements until
21 the witness has testified.

22 MR. ALEXANDER: May it please the Court, I'm in
23 exactly the same position as Mr. Silets. I represent Mr.
24 Tweel. And for the first time in two weeks apparently they
25 are fixing to introduce evidence involving Mr. Tweel. I have

1 not seen the Jencks statements except for Carol Pettijohn
2 and Helen Rippey. Were others furnished, Mr. Neal?

3 MR. NEAL: Well, we furnished three. We furnished
4 Carol Pettijohn, Helen Rippey, the next two witnesses, early
5 this morning. They are not on yet. We furnished Miss Hazel
6 Fulton about an hour ago.

7 MR. ALEXANDER: I have not received it.

8 MR. SILETS: I just received it and the time is
9 now 11:27.

10 THE COURT: Once again, gentlemen, let the Court
11 call to your attention the matter of furnishing Jencks state-
12 ments is not a matter over which the Court has any authority
13 until after the witness has testified. You gentlemen rather
14 than taking the Court's time up if you have discussions about
15 these matters, discuss them with each other. Until it is
16 appropriate that the Court might act upon them.

17 MR. HAGGERTY: May I inform the Court that when
18 we received these Jencks statements at night it takes about
19 two hours to compare these Jencks statements with statements
20 that we obtained. Now, last evening it was the election of
21 the government not to furnish us any Jencks statements. They
22 said this morning would be spent with witnesses with no
23 Jencks statements.

24 Now, we are all confronted and we are all
25 interested in all counts particularly my client. And we

1 were furnished in dribbles. I haven't read any of them.
2 These Jencks statements and there are about 50 pages of them.

3 MR. SILETS: Forty-two, your Honor, by one wit-
4 ness.

5 MR. HAGGERTY: It is patently unfair to expect
6 us to proceed without an opportunity, full reasonable oppor-
7 tunity to compare these Jencks statements.

8 Now, if your Honor wants to run the court and I
9 say your Honor does because your Honor is powerless in
10 directing the government on the Jencks statements, but I
11 call to your Honor's attention that at the conclusion of the
12 government witness we are not in position to cross-examine
13 and we are certainly entitled to a reasonable time.

14 We have files over in an office at the Patten
15 Hotel where we have two large steel file drawers of state-
16 ments which we use as comparison of the Jencks statements.
17 We can't do this by going in the lawyer's room which your
18 Honor has kindly furnished.

19 THE COURT: I appreciate your problems in that
20 respect, Mr. Haggerty, and at the appropriate time the Court
21 will see that reasonable time is given, but at this time the
22 Court cannot rule upon any such request because it is not
23 properly before the Court.

24 MR. SILETS: Your Honor, then, may I direct the
Court's attention to another proposition?

1 THE COURT: All right.

2 MR. SILETS: Apparently now the government is
3 going in for the first time by their own admission into the
4 charges against Mr. Dorfman. To date, therefore, I cannot but
5 conclude from hearing the evidence listening to the govern-
6 ment's own declarations that none of the evidence to date is
7 pertinent to Mr. Dorfman. I must, therefore, ask the Court
8 to rule that the evidence to date be stricken as against him
9 and the jury be instructed in no uncertain terms that they
10 are not to consider this as against him at all.

11 And, if Your Honor please, in the alternative I
12 ask the Court for granting of a severance and a trial
13 separate and apart from all these other defendants because
14 no matter what precautionary instruction maybe that the
15 Court might give that this cannot keep from the jury the
16 prejudicial effect that all of these documents, all of these
17 statements, all of these accusatory remarks of witnesses
18 against other parties that don't pertain to Mr. Dorfman how
19 they could keep those separate and apart and render a fair
20 and impartial verdict to Mr. Dorfman.

21 THE COURT: All right, well, overrule the motion
22 to strike the testimony that relates to Mr. Dorfman. Over-
23 rule the motion of severance.

24 MR. NEAL: We are ready to proceed, Your Honor.

25 MR. BERKE: Just one minute. If Your Honor

1 please, the government has furnished Your Honor a copy of the
2 chart. The chart is in the government's possession. If the
3 Court should rule against the defendants in that we still
4 would like to see what is in the chart. We would like to
5 have a copy of it.

6 THE COURT: All right.

7 MR. BERKE: Now, they will not give us a copy of
8 it. I have asked for it. I don't think that that is fair.
9 But we will be in a position then to argue as to the chart
10 itself. Now, we are not in position to make any such state-
11 ment on that. Now, doesn't Your Honor hold that it would be
12 proper for us to have a copy of the very thing that was
13 handed Your Honor?

14 THE COURT: Well, gentlemen, until the Court has
15 had an opportunity to read the authorities the Court doesn't
16 see any purpose in spending any time examining any chart the
17 Court or anybody else and if I do conclude that a chart
18 would be admissible then we will take up the matter of this
19 chart and certainly the defendants will have an opportunity
20 to be heard on that and have an opportunity to examine any
21 chart.

22 MR. BERKE: Then we have to take the chart, Your
23 Honor, and compare it with the transcript and Your Honor can
24 see that that will take quite a bit of time and we were
25 only trying to---, they are trying to save time, too, now

1 if they would just furnish us a copy then we would have an
2 opportunity to do that.

3 THE COURT: Well, that will certainly be required
4 if the Court comes to the point where it considers the
5 chart. At this time the Court will not consider admitting
6 the chart but rather consider studying the authorities.
7 All right, are we ready to proceed with the next witness?

8 MR. NEAL: Your Honor, would the Court instruct
9 the jury that we were at the place of Mr. Durkin introducing
10 the chart and the Court is going to have to make a decision
11 on the admissibility of this and ask the government to go on
12 with other proof so that they will not think that this has
13 been excluded?

14 THE COURT: I think the best thing to do is just
15 proceed, gentlemen. Let's have Mr. Durkin step off the
16 stand if he is not to be examined further and call the next
17 witness.

18 MR. NEAL: Miss Carol Pettijohn.

19 (Thereupon, the jury of 12 and four alternates
20 was brought into the courtroom and the following proceedings
21 were had to-wit:)

22 THE COURT: All right.

23 MR. REDDY: I think the witness will be here in
24 a moment.

25 THE CLERK: Raise your right hand please? Do you

1 solemnly swear that the evidence you will give in this case
2 shall be the truth, whole truth, and nothing but the truth,
3 so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Have a seat, ma'am.

6 MISS CAROL PETTIJOHN,

7 a witness called at the instance of the United States of
8 America, having first been duly sworn, was examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. REDDY:

12 Q Will you please state your name?

13 A Carol Pettijohn.

14 Q Where is your place of residence at this time,
15 Miss Pettijohn?

16 A In Maitland, Florida.

17 Q And do you have an occupation?

18 A Yes, I am a musician.

19 Q You are a musician?

End 14A

20 A Yes, sir.

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22 follows

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TK 15
EW 1

Pettijohn - Direct

2210

1 Q I will ask you to state whether or not during
2 the year 1962--

3 MR. SILETS: (Interposing) Objection, your
4 Honor, again Mr. Reddy is asking for an alternative, there
5 might be 50 alternatives and I suggest it's leading and
6 suggestive. If he would follow the Court's admonition to
7 please not ask leading questions.

8 MR. REDDY: I don't know where it's leading.

9 THE COURT: I am unable to understand the question
10 as yet. State your question.

11 BY MR. REDDY:

12 Q I will ask you to state whether or not you were
13 employed as a musician in Nashville, Tennessee, during the
14 year of 1962?

15 A Yes, sir.

16 Q Calling your attention to the months of October,
17 November and December of that year, were you so employed?

18 A Yes, sir.

19 Q Sir--pardon?

20 A Yes, sir.

21 Q And where were you following your occupation as
22 a musician at that time, Miss Pettijohn?

23 A In Nashville, Tennessee, at the Andrew Jackson
24 Hotel in the Surf Rider Lounge.

25 Q I don't believe I got the last part of that.

1 A In the Surf Rider room.

2 Q Surf Rider room in the Andrew Jackson Hotel?

3 A Yes.

4 Q I see. While you were employed there I will ask
5 you whether or not you met an individual named Nicholas Tweel?

6 A Yes, sir.

7 Q Will you state to the Court and jury the occasion
8 that that took place and the circumstances of your meeting
9 Mr. Tweel?

10 A Well, I was there playing the piano at the time
11 and a gentleman came to the piano and was talking to me and
12 asked for a request and he introduced himself and he was
13 having dinner with Mr. Tweel and later on they asked me to
14 join them and I had a salad with them.

15 Q I see. Now, I will ask you to look around the
16 courtroom here and see if you see the gentleman that you were
17 introduced to as Mr. Tweel.

18 A Yes, sir.

19 Q You do see him?

20 A Yes, sir.

21 Q Will you point him out, please?

22 A He's over here on the far right.

23 Q Over here on the far end of the table?

24 A Yes, sir.

25 Q The gentleman with the blue suit and the blue tie

1 and the glasses--no, not the glasses.

2 A No glasses.

3 Q No glasses. All right. Now, do you remember
4 or do you recall when the Hoffa trial was on at Nashville,
5 were you there then?

6 A Oh, yes.

7 Q And did this meeting with Mr. Tweel take place
8 about that time?

9 A Yes, sir.

10 Q On the occasion that you met I will ask you--
11 first, strike that and ask you insofar as your activities as
12 a musician were concerned whether you played during the day
13 or at night?

14 A I played at night.

15 Q You played at night?

16 A Um-hmm.

17 Q And was it at night that you met Mr. Tweel?

18 A Yes, sir.

19 Q On the occasion that you met him I will ask you,
20 Miss Pettijohn, whether you and others, if there were others,
21 had occasion to leave the hotel that evening and go to any
22 other place in Nashville?

23 A Yes, sir. That evening the hostess and I and
24 this group we went to three clubs and then afterwards we went
25 for coffee at a restaurant.

- 1 Q You mentioned the hostess, what was her name?
- 2 A Miss Helen Rippey.
- 3 Q Miss Helen Rippey. She was the hostess in the
- 4 Surf Rider room?
- 5 A Yes.
- 6 Q I call the name of the Sportsman Bar to your
- 7 attention, do you recall that name?
- 8 A Yes, sir.
- 9 Q Did you at the group go to the Sportsman Bar at
- 10 that time?
- 11 A Yes, sir, after we went to two other lounges.
- 12 Q Two other lounges?
- 13 A It was Miss Rippey's idea that we go there.
- 14 Q I see.
- 15 A I had never heard of the place.

End Tk 15 16
Tk 15A fls.

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- 1 Q Was Mr. Tweel with you at these various places
2 that you and the group went to?
3 A And some other gentlemen, two other gentlemen.
4 Q He and two other gentlemen. Now, I will ask you
5 whether or not when you arrived at the Sportsman's Bar, or
6 after you arrived there, you met any individual other than
7 those in your immediate party?
8 A I was introduced to the bartender.
9 Q Do you recall his name?
10 A Dallas, that's all I know.
11 Q You don't know or recall his last name?
12 A The only reason I do is because I have heard it
13 since but I knew of him before.
14 Q Before you went there?
15 A Yes.
16 Q And his name was Dallas?
17 A Yes, sir.
18 Q I will ask you whether or not you and your party,
19 that is, the party including Mr. Tweel, remained at the
20 Sportsman's Bar after arriving there, stayed there?
21 A I don't know exactly how long we were there, we
22 weren't at any of the places very long.
23 Q But you did remain at the Sportsman's Bar for
24 some period?
25 A Well, that was the last lounge we went to and then

1 afterwards we went to a restaurant for coffee.

2 Q I see. Well, now, while you were at the Sportsman's
3 Bar, were you seated at a table or--

4 A (Interposing) Well, I sat down and I was talking
5 to one of the gentlemen there.

6 Q Pardon me.

7 A I was sitting talking to one of the gentlemen
8 there.

9 Q In your group?

10 A In the group, uh-hmm.

11 Q I see. I will ask you to state whether or not
12 while you were there you saw the Defendant Dorfman carry on
13 a conversation with anyone other than those in your party?

14 A Yes, sir.

15 Q And who was that that you saw Mr. Tweel talking
16 with?

17 A With the bartender.

18 Q Is that Dallas that you referred to as Dallas?

19 A That's the man I was introduced to, yes, when I
20 first walked in.

21 Q Did he talk to him at the table you were seated
22 at, you and your party?

23 A No, he was just standing there, just standing
24 there, that's all.

25 Q At the bar?

1 A Just standing, you know.

2 Q I see. Now, where did you and the group--, I
3 believe you stated you went someplace after you left the
4 Sportsman's Bar.

5 A We went to a restaurant for coffee.

6 Q You went to a restaurant for coffee?

7 A Uh-hmm.

8 Q Did you and the others eventually leave the
9 company of Mr. Tweel and the other gentlemen?

10 A They took us to--, they took us to the front of
11 the hotel where I was living and, of course, escorted Miss
12 Rippey to her car.

13 Q That was after you had your coffee at the
14 restaurant?

15 A Yes.

16 MR. REDDY: That's all.

17 CROSS EXAMINATION

18 BY MR. GRADY:

19 Q Miss Pettijohn, I'd like to clear up a few things
20 there. Had you ever known Nicholas Tweel before that time?

21 A No, sir.

22 Q Had you ever known this bartender except to hear
23 of him, Dallas Hall, before that time?

24 A No, sir. I had never even been to the place
25 before.

1 Q Of course--

2 A (Interposing) I had only heard of him.

3 Q You knew Miss Rippey?

4 A Oh, yes, I had worked there for several months.

5 Q In other words, you were a pianist in the place
6 that she worked?

7 A Yes.

8 Q And naturally you all were friendly and worked
9 together.

10 A Yes, sir.

11 Q And on this particular night I believe you said
12 there were three gentlemen and two girls, you and Miss
13 Rippey, that toured these various places.

14 A That is correct.

End 15A 15 Q Just in the line of entertainment, was it not?

Tk 16
follows

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1 A I don't understand what you mean by in the line
2 of entertainment?

3 Q Well, just something to do, places to go?

4 A That is all. Just nobody was interested in any-
5 thing but just hearing some good live music.

6 Q And --

7 A (Interposing) Just a group.

8 Q All of you would just go to various places?

9 In other words, you all more or less showed them around Nash-
10 ville?

11 A That's right.

12 Q And, of course, one man left the party, original
13 party, did he not?

14 A That's right, before we ever left.

15 Q Before you left the Andrew Jackson where you
16 worked?

17 A That's right.

18 Q And that left the two girls and the two men and
19 Mr. Tweel was just more or less an odd man?

20 A No, there were no dates. It was not necessarily --

21 Q (Interposing) I understand.

22 A We were just a group. If Miss Rippey or any of
23 us didn't like it we could independently take off.

24 Q But there were three men and two girls?

25 A That's right, but there was no pairing up. None

1 of them were interested in us. It was just escorting.

2 Q These places you went to -- I thought you were
3 through -- these places you went to, they had drinks and
4 dancing?

5 A Yes, of course.

6 Q And, of course, various members of the party
7 talked to other people in these places besides just talking
8 to each other, didn't they?

9 A I am sure, yes.

10 Q And so it was nothing unusual for anybody to be
11 talking to anybody?

12 A No, it certainly wasn't.

13 Q Either in the Black Poodle or what was the name
14 of that place?

15 A Sportsman's something.

16 Q No, the other one, the one before that.

17 A The Carousel?

18 Q Carousel and wasn't there one called the Poodle
19 or something of that sort?

20 A Yes.

21 Q And so it would be nothing unusual about anybody
22 talking to anybody? You talked to other people, did you not?
23 In these places besides members of your party?

24 A Of course, I did.

25 Q And so did Miss Rippey? And so did the other two

1 men and so did Mr. Tweel?

2 A Yes.

3 Q Now, who suggested, these people to your knowledge,
4 you never knew any of them before, did you?

5 A No, sir, they were just very nice men.

6 Q You understood they were strangers in Nashville?

7 A Of course.

8 Q Now, you say that the Hoffa trial was going on
9 at this particular time, are you sure of that?

10 A Yes, I'm sure.

11 Q You are sure it was going on?

12 A (Witness nods head up and down.)

13 Q And now, could it have been some time before the
14 Hoffa trial actually started?

15 A I don't believe so.

16 Q You don't believe so?

17 A No.

18 Q Has the date been suggested to you by anyone?

19 A No, it has not. I just know that my contract
20 says when I was there.

21 Q I see. But you were there before the Hoffa trial,
22 too, were you not?

23 A That's right.

24 Q How many times have you been contacted by any
25 government officials, FBI, attorneys, anybody else concerning

1 your testimony?

2 A Well, I don't know what you mean by contacted.

3 Do you mean how many times have I talked with?

4 Q Yes.

5 A Oh, maybe twice or three times.

6 Q Maybe twice or three times, have you been before
7 the Grand Jury?

8 A Yes.

9 Q On these -- and you do not feel -- and you do
10 not feel sure in your own mind that it has not been suggested
11 to you and that the Hoffa trial was in progress this night
12 that you all toured Nashville?

13 A I know it was.

14 Q You know it was?

15 A Yes.

16 Q And who in the party suggested going to the
17 Poodle?

18 A I don't think anybody really suggested. I can't
19 remember this. Except that these places were all together
20 in one section of Fourth Avenue in Nashville, Tennessee. And
21 they were places where they have all live music except now,
22 well, we went to two of them. There were about four or five
23 places down there in that area and we went to two of them
24 and we had a drink and we didn't stay very long, thirty
25 minutes.

1 Q Just go from one place to another? Just more or
2 less seeing Nashville?

3 A That's right.

4 Q And this Sportsman, this Dallas at Sportsman,
5 that is the last place you went to?

6 A No, sir.

7 Q That is the place in this tour of night spots
8 you went to?

9 A Yes, sir.

10 Q Then after that you went to a restaurant?

11 A Restaurant.

12 Q And went on to your home where you were staying?

13 A Yes, sir.

14 Q And who suggested going to the Sportsman, do you
15 know that?

16 A Miss Rippey because she is the only one that
17 knew about the place. First of all, I am not from Nashville
18 and I had never even heard of the place. Maybe I had heard
19 of it, but I had never been there before so she suggested
20 going there and the other gentlemen I don't think had ever
21 heard of it.

22 Q I believe you stated that you had heard of Dallas
23 or Dallas Hall, whatever his name is, before, do you recall
24 the occasion of hearing about him before?

25 A Well, you hear about proprietors in these places

1 when you are -- when you are in the public, meeting the
2 public, you hear about a lot of people.

3 Q And at this last place, this Dallas Hall place,
4 did the parties purchase any drinks?

5 A Yes.

6 Q And that is what is known as an after-hours
7 bar, is it not?

8 A That's right.

9 Q Do you know whether it is?

10 A I imagine it is after hours. It must have been.
11 It had to be after twelve because I didn't get off until
12 twelve.

13 Q In other words, to put it in plain language,
14 it is an illegal establishment, is it not?

15 A Well, I don't -- I'm not in the law business so
16 I wouldn't know that.

17 Q Is that the general reputation of the place?

18 A I beg your pardon?

19 Q You answered a minute ago that it was after hours,
20 I don't want to argue with you, but I'm trying to find out
21 the facts.

22 A I certainly don't want to argue.

23 Q What did you mean after hours?

24 A You were the one suggested after hours.

25 Q What does that connote to you?

1 A It means after midnight to me.

2 Q And you did not understand that be an illegal
3 operation conducted by Mr. Hall out there?

4 A If I had really considered a thing like that I
5 don't know that I would have been there. Maybe I just didn't
6 consider it.

7 Q You don't know from your work in Nashville whether
8 it is legal to sell whiskey by the drink or not to people in
9 a bar, do you?

10 A No, not after hours because they have different
11 laws in different cities in Tennessee.

12 Q You really don't know?

13 A Whether they are legal or not, nobody can really
14 tell.

15 Q Was there any particular reason of going to
16 Hall's place rather than any other place at that time of
17 night?

18 A I don't understand you.

19 Q Was there any particular reason for going to
20 Dallas Hall's place instead of any other place at that time
21 of night?

22 A No particular reason except that Miss Rippey had
23 suggested it. She asked me if I had ever been there and I
24 had never been there. And whether we were at either the
25 Poodle or the Carousel it was very crowded and terribly loud.

1 And it was just -- you couldn't hear yourself talk.

2 Q Was Mr. Tweel the only member in your party
3 that talked to Mr. Hall?

4 A No.

5 Q And do you recall hearing any of his conversation
6 with Dallas Hall?

7 A No, I do not because I was sitting over to the
8 side. I couldn't see.

9 Q You don't recall any of it. Just to refresh your
10 memory, did it have anything to do with race horses? Did you
11 ever hear anything of that sort?

12 A No. When I was at the table I think we were dis-
13 cussing horses. I happened to be an avid fan of horses.

Tk 16 end
17 fls

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1 Q And so there was nothing really unusual and Miss
2 Rippey, who introduced--or was there any introduction of Mr.
3 Tweel to Dallas Hall there?

4 A I believe so because when we went Miss Rippey
5 introduced all of us.

6 Q Miss Rippey did?

7 THE COURT: All right.

8 MR. ALEXANDER: Just one minute.

9 BY MR. GRADY:

10 Q Just one more question, Miss Pettijohn. Was Mr.
11 Tweel a perfect gentleman in every respect during the night?

12 A Completely so.

13 MR. GRADY: That's all.

14 BY MR. SILETS:

15 Q I just have a couple of questions, ma'am. Do
16 you remember whether this was on a Monday night or a Sunday
17 night?

18 A I remember it was a week-day night.

19 Q It was a week-day night?

20 A That's all.

21 Q Just one more question. You said, if my notes
22 are right, that you knew of Dallas before you went to this
23 Sportsman, you had heard of him?

24 A I had heard of him.

25 Q I don't mean in acquaintance.

1

A Oh.

2

Q I mean you had heard of him?

3

A Yes.

4

Q What had you heard of him?

5

A I couldn't possibly be sure, I really couldn't

6

except that I am not sure whether it was good or bad.

7

Q You had heard some talk about him?

8

A Well, you hear things that goes out one ear and that's it, I had heard his name mentioned because I had been there in Nashville for several months.

11

Q Did the government ask you this question also, what you had heard of him?

12

13

A No, sir.

14

Q You haven't discussed that with the government at all?

15

16

A No, sir.

17

Q Now, what you heard could have been very bad things, couldn't it?

18

19

A It could have been.

20

MR. SILETS: Nothing further.

21

THE COURT: Anything further?

22

MR. REDDY: Nothing further, your Honor, unless

23

Mr. Branstetter has.

24

MR. BRANSTETTER: May it please the Court, I

25

would ask an instruction of the jury as has been going on

1 previously that unless there is some testimony relating to
2 the Defendant Campbell that they are not to consider it in
3 any particular whatsoever.

4 THE COURT: Well, the Court gave the appropriate
5 instructions to the jury in that respect the first thing this
6 morning when they were brought in.

7 MR. HAGGERTY: That applies to all of the
8 defendants, your Honor.

9 THE COURT: Yes. All right. That will be all.
10 You may be excused.

11 (Witness excused.)

12 THE COURT: All right. The jury may be excused
13 at this time for lunch. Now, ladies and gentlemen, again
14 observe the same instruction, do not discuss the case among
15 yourselves or allow anyone to talk with you about it. Be
16 back at 1:30.

17 (Thereupon, the jury of 12 and 4 alternates were
18 excluded from the courtroom and the following proceedings
19 were had, to-wit:)

20 THE COURT: All right. Gentlemen, are there any
21 matters that are appropriate to take up in the absence of the
22 jury before adjournment? Let's see what matters the Court
23 has under advisement.

24 There was some question raised, Mr. Hooker, about
25 whether some exhibits were or were not in the record, is

1 there any question?

2 MR. HOOKER: No, sir, unless we might just move
3 at this time that any exhibits that the record shows that
4 haven't been admitted in evidence we should clarify it that
5 they be received in evidence.

6 THE COURT: The Court has no knowledge of any
7 exhibits offered that were not admitted. Do you recall any?
8 Call any specific exhibits to the Court's attention in that
9 respect.

10 MR. HOOKER: We will.

11 MR. REDDY: Your Honor, I have just been handed
12 a note about perhaps Exhibits 35, 36, 17 and 41, there may
13 be some question.

14 THE COURT: Exhibits what?

15 MR. REDDY: Thirty-five, 36, 17 and 41.

16 THE COURT: All right.

17 MR. REDDY: We would like to have those filed.

18 THE CLERK: We will take that up after the noon
19 recess. Let's recess court until 1:30.

20 (Thereupon, at 11:58 o'clock A.M. court was
21 adjourned for the noon recess until 1:30 o'clock P.M.)

End Tk 17 22
Tk 18 fls.

23

24

25

AFTERNOON SESSION

January 30, 1964
1:30 p.m.

(Thereupon, pursuant to adjournment for the noon recess, court was in session.)

THE COURT: Gentlemen, the Court has not had an opportunity to check the record with regard to the exhibits referred to immediately before lunch. We will take that up at another time. The Court will reserve likewise any decision on the testimony purported to be offered by the Witness Durkin.

MR. NEAL: Does that include the charts, your Honor?

THE COURT: Yes.

MR. NEAL: You are reserving ruling on that at this time?

THE COURT: Yes, sir.

MR. NEAL: Would it be helpful to your Honor if Mr. Durkin would give your Honor a chart with the exhibits marked on which the entries are based?

THE COURT: No, sir, at this time, Mr. Neal, on the basis of what the Court has been able to read, the Court is inclined to believe that the chart would not be a proper method of introducing that, but I do want to study the cases further. It appears to the Court that that more appropriately

1 is a matter of argument.

2 MR. NEAL: Well, your Honor, would your Honor
3 indicate in which manner he is worried? We didn't have --

4 THE COURT: (Interposing) Well, you have intro-
5 duced -- this chart as I understand its purpose adds nothing
6 to the testimony. It merely relates the testimony. It
7 doesn't add one iota of testimony nor does it take away any
8 testimony that is in the record. It purports to relate the
9 testimony. It is the Court's understanding and impression
10 that the matter of relating testimony is a matter of argument
11 and it is properly a matter to be taken up at the time of
12 argument.

13 MR. NEAL: Your Honor, it is true that the chart
14 doesn't add any testimony. A chart, my understanding is a
15 chart couldn't add to the testimony. We don't offer this
16 and the Court according to the Sixth Circuit cases might
17 properly instruct that this is not additional testimony.
18 Certainly it doesn't take away from testimony.

19 THE COURT: Is this other than an attempt by a
20 person, a witness in this case, and one of the attorneys
21 associated with the government, to collate or relate together
22 testimony that has already been produced? Testimony which he
23 himself didn't even produce?

24 MR. NEAL: Your Honor, according to Epstein, all
25 the cases that we cited, that is the purpose of the chart.

1 Your Honor can certainly appreciate the fact that these tele-
2 phone calls would be somewhat meaningless in isolation and
3 taken alone. It will be confusing.

4 THE COURT: Isn't that the job of counsel on the
5 argument of the case? Isn't that the problem we have in
6 every lawsuit?

7 MR. NEAL: Not without the help of a chart, your
8 Honor. That simply summarizes the evidence in the record.
9 And I think that that is the meaning of these cases. That
10 they do summarize the documents of record if that would be
11 helpful to the jury.

12 Now, the cases, Sixth Circuit cases, say precisely
13 that. If this were an argumentative chart or if this chart
14 were based on inflammatory headlines or something like that,
15 I could certainly understand your Honor's feelings.

16 THE COURT: What would be the difference of
17 introducing a chart at this time and allowing you to make
18 the statement to the jury that you made to the Court in the
19 absence of the jury before lunch in which you appeared to
20 relate these telephone calls and their significance in the
21 case?

22 MR. NEAL: The difference is, your Honor, that
23 simply this chart is based upon physical documents which are
24 voluminous, which are by themselves may or may not be meaning-
25 ful to the jury. It is just like a schedule in a net worth

1 case or check kiting case which we have shown charts were
2 admissible. In a prohibition case. All of these things,
3 your Honor, are simply aids to the jury and have been held
4 time and time again to be admissible if they are not presented
5 by inflammatory conclusionary captions or if they are not
6 grossly argumentative in themselves.

7 Now, we had a chart, your Honor, that in my
8 humble opinion I felt would have been admissible that simply
9 set out what is a matter of inference here, your Honor, and
10 that is that Tom Parks and Larry Campbell were making calls
11 between each other during this period of time. We deliberately
12 decided not to ask that that chart be introduced because your
13 Honor could say that that would be argumentative based on
14 inferences.

15 What we are doing now, your Honor, is taking the
16 direct call and putting it in a chart so that it will be
17 somewhat intelligent to the jury. We are seeking the truth
18 here, your Honor, in cases as I understand them and as I say
19 there is a plethora of Sixth Circuit cases as I understand it
20 that when a chart is not grossly argumentative, where it is not
21 the subject of an inflammatory caption or a caption that says
22 in effect he is guilty, that this is helpful to the jury in
23 arriving at the truth.

End Tk 18
T. 19 fls

24

25

1 THE COURT: Well, I have not as yet had an
2 opportunity to read all of the cases and the defense has
3 just submitted a brief, which I haven't had an opportunity to
4 look at as yet.

5 MR. NEAL: Well, we have no objection, I mean
6 of course we don't, but we certainly submit to the Court's
7 reservation of a decision of this but we most earnestly
8 beseech the Court to give this careful study because it is
9 important to the government or we would not urge, we would
10 not continually urge it otherwise, and we think we are
11 clearly right on the law.

12 MR. SCHIFFER: Your Honor, to clarify one of the
13 points in evidence on these telephone records, is it not
14 understood, Your Honor, that these items which have been
15 introduced in evidence, the telephone company slips that they
16 are introduced merely to show records of the company but
17 they are not introduced as being accurate and truthful or
18 connected in and of themselves with any of the defendants?

19 MR. NEAL: Your Honor, you will see when the
20 chart is disclosed, you will see we have calls in there from
21 Larry Campbell to the Mix residence. There has been testimony
22 directly in the record that calls were made to the Mix
23 residence.

24 Now, I would like to point out to Your Honor
25 that even that defendants' answer to the government's motion

1 doesn't deny that charts are admissible. The very cases cited
2 or the section in Wigmore, which they apparently rely on
3 greatly, admits or concedes that charts are admissible and
4 you can read the first section. They have no--, these people
5 have no--, and I know they don't because I have been with
6 them when charts were admitted--, they have no--, in Nashville
7 in 1962, for example, I say some of the people, when charts
8 were admitted and they don't concede or they don't dispute
9 the fact that charts are admissible and when they do concede
10 the fact that charts are admissible I don't see how a chart
11 could be any fairer, any less inflammatory than the chart we
12 prepared to go in here.

13 THE COURT: All right.

14 MR. HAGGERTY: May I just say briefly that bringing
15 in another case entirely different, that was the question of
16 finances where there were literally hundreds of exhibits and
17 some charts were held to be competent and some charts were held
18 to be incompetent. That is entirely an unfair and immaterial
19 argument.

20 THE COURT: Well, the Court will have to consider
21 these matters further. I am not in position to rule at this
22 time.

23 Very well. May we have the jury back in and call
24 the next witness?

25 (Thereupon, the jury of 12 and four alternates

1 returned into open court and the following further proceedings
2 were had.)

3 MR. DALE: Would you raise your right hand, please?
4 Do you solemnly swear that the evidence you will give in this
5 case shall be the truth, the whole truth, and nothing but the
6 truth, so help you God?

7 MISS RIPPEY: I do.

8 MR. DALE: Have a seat.

9 THE COURT: Will you please turn around so the
10 jury can see?

11 HELEN RIPPEY,

12 a witness called at the instance of the United States of
13 America, being first duly sworn, was examined and testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. REDDY:

17 Q Will you please state your name?

18 A Helen Rippey.

19 Q And your place of residence, Miss Rippey.

20 A 1710 Hayes Street, Nashville.

21 Q What is your occupation?

22 A I am hostess at the Surf Rider at the Andrew Jackson
23 Hotel.

24 Q And how long have you been engaged in that
25 employment?

1 A Since 1957.

2 Q Were you working at the Surf Rider in 1962?

3 A Yes, I was.

4 Q Were you working there during the months of

5 October, November and December, 1962?

6 A Yes, sir.

7 Q Do you know a Miss Carol Pettijohn?

8 A Yes, sir.

9 Q Did you know her during the year 1962?

10 A Yes, I did.

11 Q She worked there at the hotel, too, did she not?

12 A Yes, she did.

13 Q I will ask you whether or not during 1962, if at

14 any time during 1962 you met an individual named Nicholas

15 Tweel at your place of employment?

16 A Yes, sir.

17 Q Will you tell the Court and jury the circumstances

18 or how you happened to meet this individual, Mr. Tweel, at

19 that time .

20 A He had dinner, he and three other gentlemen had

21 dinner in the Surf Rider one evening and they stayed a good

22 part of the evening or most of the evening in the Surf Rider

23 and they stayed until twelve o'clock, at which time we closed.

24 Q I see. And I will ask you to look around the

25 courtroom and see if you see the individual you met known as

- 1 Mr. Tweel on that occasion?
- 2 A Yes, sir, he's sitting over here. (Indicating.)
- 3 Q The gentleman that held the glasses up?
- 4 A Yes, sir.
- 5 Q Do you recall when the Hoffa trial took place over
- 6 there at Nashville?
- 7 A Yes, I don't recall the exact date but I remember
- 8 the time it was taking place, yes, sir.
- 9 Q Was it about that time that you met Mr. Tweel?
- 10 A Well, yes, it was during that time either--, about
- 11 the time it was starting or perhaps it was already started.
- 12 Q This occasion that you speak of that you met Mr.
- 13 Tweel that night, I will ask you to state whether or not Miss
- 14 Pettijohn was there at the Surf Rider room?
- 15 A Yes, she was, she was playing the piano.
- 16 Q Playing the piano. And I believe you stated that
- 17 Mr. Tweel was with a couple of other gentlemen for dinner.
- 18 A I believe it was three other gentlemen and maybe
- 19 one left earlier.
- 20 Q Now, I will ask you what time you finished your
- 21 employment there, or did you?
- 22 A Twelve o'clock.
- 23 Q At twelve o'clock?
- 24 A Yes.
- 25 Q Did Miss Pettijohn also discontinue playing the

1 piano at that time?

2 A Yes, yes, sir.

3 Q I will ask you to state whether or not you and
4 Miss Pettijohn and Mr. Tweel and anyone else left the Surf
5 Rider room on that occasion and went to some other place in
6 Nashville.

7 A Yes, we did. It was perhaps twelve-thirty or
8 perhaps a few minutes after, we went to two clubs, three,
9 really three clubs, four--, perhaps staying perhaps maybe
10 thirty minutes or forty minutes in each place.

11 Q Do you remember the names of them, Miss Rippey?

12 A Yes, sir.

13 Q Tell the Court and the jury.

14 A The first place we went was the place called the
15 Black Poodle.

16 Q The what?

17 A Black Poodle.

18 Q Black Poodle?

19 A The next place was called the Carousel, which they
20 were just side by side, they were out of one into the other,
21 really, and then we went to one called the Sportsman's Lounge.

22 Q The Sportsman's Lounge?

23 A Yes.

24 Q Do you know who operates the Sportsman's Lounge
25 or did at that time?

19-7 . Rippey - Direct

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1 A Yes, sir.

2 Q What is his name?

3 A Mr. Dallas Hall.

4 Q Mr. Dallas Hall?

5 A Yes.

6 Q I will ask you to state whether or not you saw
7 Mr. Hall on the occasion that you and Mr. Tweel and the other
8 persons in your party were there that night?

9 A Yes, sir.

10 Q Had you known him prior to this occasion?

11 By that I mean--

12 A (Interposing) Well, I knew him when I saw him,
13 I didn't know his last name, I knew him by Dallas, I didn't
14 know his last name and I did know him when I would see him,
End Tk 19 15 yes.

16

Tk 20
follows

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1 Q Did you have occasion to introduce any of the
2 members of your party to Dallas that evening?

3 A Yes, sir. When we walked in I believe I said,
4 "Dallas, these are friends that I brought from the hotel,"
5 and introduced them.

6 Q Did that include Mr. Tweel?

7 A Yes, sir.

8 Q Now--

9 A I don't know for sure whether we called them
10 names or whether--well, maybe just said friends from the
11 hotel.

12 Q But insofar as Mr. Tweel and Mr. Hall were con-
13 cerned, they did meet one another, is that right, there that
14 night?

15 A Yes, sir.

16 Q I believe you stated you remained there how long?

17 A Thirty or 40 minutes.

18 Q Thirty or 40 minutes?

19 A Not very long.

20 Q Were you and the others in your party seated
21 there?

22 A Yes.

23 Q At a table?

24 A Yes. In a booth.

25 Q In a booth?

1 A Yes.

2 Q And they had some music on that evening?

3 A Yes.

4 Q And I will ask you to state whether or not you
5 and Miss Pettijohn had occasion to dance at that time with
6 any of these parties?

7 A Yes, we did. Once, maybe twice. Not over twice.

8 Q And Mr. Tweel danced with either you or Miss
9 Pettijohn?

10 A No, he didn't.

11 Q I will ask you to state whether or not you saw
12 Mr. Tweel talk to anyone there at the Sportsman's Lounge or
13 Bar other than the members of your immediate party?

14 A Well, he was at the end of the bar talking to
15 Mr. Hall.

16 Q And could you tell the Court and jury approxi-
17 mately how long Mr. Tweel and Mr. Hall engaged in their
18 conversation?

19 A Well, we weren't there too long and, as I say,
20 maybe 30 or 40 minutes maybe and most of the time he stood
21 there and talked to Mr. Hall.

22 Q I will ask you whether or not during the evening
23 Mr. Tweel said anything to you about horses or horse racing
24 or race tracks?

25 A Yes, at the other places we were, we were talking

1 about horses and horse racing.

2 Q Did he make any statement to you about an interest
3 in horses or--

4 A Well--

5 Q Race track?

6 A Well, he was talking about, I don't know whether
7 a track or horses, racing in California. I don't think he
8 mentioned any place, the name of any place, just California.

9 Q After you left the Sportsman's Lounge or Sports-
10 man's Bar, where did you and your friends go that evening?

11 A We went to a restaurant that is on Broad Street
12 in Nashville called Linebaugh's Restaurant for breakfast.

13 Q And then did you eventually return to the hotel?

14 A Yes. I had my car at the hotel parked on the
15 side. The hotel is on the corner and my car was parked just
16 around the corner and we went back to the hotel and I got my
17 car and Miss Pettijohn lived in the hotel.

18 Q I see. And did you go on home from there?

19 A Yes, sir.

20 MR. REDDY: You may ask her. Just a moment.

21 That is all.

22 MR. SILETS: No questions.

23 MR. ALEXANDER: No questions on behalf of Defendant
24 Tweel.

25 THE COURT: All right, you will be excused at

1 this time.

2 MR. HOOKER: Call Miss Hazel Fulton.

3 (Witness excused.)

4 THE COURT: Now, as I understand the last two
5 witnesses may be excused as far as any party is concerned
6 at this time?

7 MR. REDDY: How about Miss Pettijohn?

8 THE COURT: I mentioned both, yes, sir.

9 MR. REDDY: Both of them may be excused.

10 THE CLERK: Raise your right hand, please. Do
11 you solemnly swear that the evidence you will give in this
12 case will be the truth, the whole truth, and nothing but the
13 truth, so help you God?

14 THE WITNESS: Yes, sir.

15 THE CLERK: Have a seat.

16 MISS HAZEL FULTON,

17 a witness called at the instance of the United States of
18 America, having been first duly sworn, was examined and
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. HOOKER:

22 Q Is this Miss Hazel Fulton?

23 A Yes, sir.

24 Q Miss Fulton, where do you reside at the present
25 time?

1 A 1107 Fourth Avenue, Huntington, West Virginia.

2 Q You are going to have to speak out a little bit
3 louder I'm having some difficulty and I'm sure these gentlemen
4 are, too. You say 1107 Fourth Avenue, Huntington, West
5 Virginia?

6 A Yes, sir.

7 Q Where are you presently employed?

8 A At the Mayflower Distributors, Huntington, West
9 Virginia.

10 Q Mayflower Distributors?

11 A Yes, sir.

12 Q When did you commence your employment with May-
13 flower Distributors in Huntington, West Virginia?

14 A October 15, 1962.

15 Q Was Mr. Nicholas Tweel connected with that
16 concern at that time?

17 A Yes, sir.

18 Q Is he connected with it at the present time?

19 A No, sir.

20 Q Do you recognize Mr. Tweel here in the courthouse
21 today? Do you see him?

22 A Yes, sir.

23 Q Could you identify which one of the gentlemen,
24 which one of the gentlemen do you identify him as being?

25 A He is sitting in the center last row here.

1 Q Last row here with the two men back together?

2 A Yes, sir.

3 Q How long had you known Mr. Tweel prior to the
4 time of your employment with the Mayflower Distributors?

5 A I did not know him at all.

6 Q Did not know him and what was the date, did you
7 state the date that you commenced working there?

8 A October 15, 1962.

9 Q What year?

10 A 1962.

11 Q 1962?

12 A Yes, sir.

13 Q Now, tell these ladies and gentlemen of the jury,
14 Miss Fulton, something about what your duties were with May-
15 flower Distributors?

16 A I was bookkeeper, secretary and treasurer.

17 MR. SILETS: I didn't get that, ma'am.

18 THE WITNESS: Bookkeeper, secretary and treasurer.

19 BY MR. HOOKER:

20 Q Bookkeeper, secretary-treasurer?

21 A Yes, sir.

22 Q Did you have at that time any proprietary
23 interest in the business?

24 A At that time, no, sir.

25 Q Do you at the present time have some proprietary

1 interest in the business?

2 A Yes, I do.

3 Q Did you have any connection with or any duties
4 concerning telephone at the place of business?

5 A Yes, sir. I answered the phone.

6 Q You answered the phone?

7 A Yes, sir.

8 Q Would Mr. Tweel, did he have a separate office
9 from you all or were you all in the same office together?

10 A There was only one office.

11 Q One office?

12 A Yes, sir.

13 Q And you each had a desk in this same office?

14 A Mr. Tweel did not have a desk.

End Tk 20 15
Tk 21 fls.

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1 Q But you had a desk there?

2 A Yes, sir.

3 Q Now, during the months of November and December,
4 1962, did you have any occasions to make calls for Mr. Tweel
5 to any persons in Nashville, Tennessee?

6 A Yes, sir, I placed calls for Mr. Tweel.

7 Q Do you remember who those parties were?

8 A Yes, I made a call to Mr. Dallas Hall in Nashville,
9 Tennessee.

10 Q Anyone else?

11 A In Nashville, no, sir.

12 Q Well, do you recall any other telephone conversa-
13 tions or persons that he had telephone conversations with
14 during that period?

15 A From Nashville?

16 Q Or any other point.

17 A Yes, sir.

18 Q Nashville or Chicago?

19 A Yes, sir.

20 Q Who was that?

21 A Mr. Allen Dorfman.

22 MR. SILETS: Your Honor, I am going to strike
23 this unless there is a foundation laid as to how she has
24 knowledge of these conversations?

25 MR. HOOKER: We are going to get to that, if your

1 Honor please. I can't prove it all at once.

2 THE COURT: All right.

3 BY MR. HOOKER:

4 Q Did you have more than one -- did you make more
5 than one telephone call for the Defendant Nicholas Tweel
6 or to the Defendant Allen Dorfman during that period?

7 MR. SILETS: Objection, your Honor. She has not
8 said that she has made any phone calls to Mr. Dorfman.

9 THE COURT: Sustain the objection.

10 BY MR. HOOKER:

11 Q Well, did you make any telephone calls between
12 those parties during that period?

13 A Repeat the question, please.

14 Q Did you make any telephone calls for Mr. Tweel?

15 A Yes, sir, I did.

16 Q For the parties that you mentioned?

17 A Yes, sir, I did.

18 Q Did you make more than one call for Mr. Tweel
19 for the Defendant Allen Dorfman?

20 A I can't remember how many calls.

21 Q Well, do you say one or more than one, which?

22 A I would, I know I made one.

23 MR. SILETS: Your Honor, excuse me, ma'am.

24 Mr. Hooker is asking the witness to speculate, your Honor.

25 MR. HOOKER: No, I am not.

1 MR. SILETS: Mr. Hooker, if you don't mind, sir.
2 She has indicated that she doesn't know and now he is asking
3 her to speculate how many she might have made, if she made
4 any. I still don't know whether she made any phone calls to
5 Mr. Dorfman.

6 MR. HOOKER: She stated she did, if your Honor
7 please.

8 THE COURT: Overruled.

9 BY MR. HOOKER:

10 Q I am asking for your best recollection whether
11 you made more than one or not?

12 A I don't know how many.

13 Q You don't know. Did you answer any telephone
14 calls from Mr. Dorfman to Mr. Tweel?

15 MR. SILETS: Objection.

16 A Yes, sir.

17 MR. SILETS: I move that this be stricken because
18 there is no foundation laid for this and, if the Court please,
19 I would like to have this heard outside of the presence of
20 the jury.

21 This is an extremely important issue in the case
22 and Mr. Hooker hasn't laid any foundation for that.

23 MR. HOOKER: If your Honor please, there is no
24 foundation necessary. I am asking about conversations between
25 these two defendants.

1 THE COURT: Overrule the objection.

2 MR. SILETS: Your Honor, may I be heard on this
3 then, may I have the opportunity?

4 THE COURT: All right, ladies and gentlemen.

5 (Thereupon, the jury of twelve and four alternates
6 were excluded from the courtroom and in their absence the
7 following proceedings were had, to-wit:)

8 MR. SILETS: May the witness be excused, your
9 Honor?

10 THE COURT: All right.

11 THE MARSHAL: No conversation in the court,
12 please.

13 MR. SILETS: Can the witness be instructed?

14 THE COURT: Yes, sir. Miss Fulton, do not dis-
15 cuss your testimony with anyone while you are out.

16 THE WITNESS: No, sir.

17 (Thereupon, the witness was excluded from the
18 courtroom.)

19 THE COURT: All right.

20 MR. SILETS: If your Honor please, there has been
21 no foundation laid that this witness knows Mr. Dorfman, has
22 ever heard his voice, can ever testify to any conversation
23 with respect to Mr. Dorfman.

24 Now, it is basic between the witness and her
25 testimony that she must testify, if she can, as to things she

1 has knowledge of.

2 Now, properly Mr. Hooker might have asked her
3 had she ever heard Mr. Dorfman's voice or has she ever
4 spoken to Mr. Dorfman.

5 Answer, "Yes."

6 "Could you recognize his voice on the phone if you
7 heard it?"

8 "Yes."

9 "Did you ever hear such a voice on the telephone?"

10 Then he can proceed into this.

11 Now, your Honor, I have a memorandum of law on
12 this subject, which I would like to hand up to the Court.

13 THE COURT: All right.

14 MR. SILETS: Now, this is the basic crux of the
15 case as to the Defendant Dorfman. The government is going to
16 seek -- and I gather this from my investigation -- the govern-
17 ment is going to try to seek to establish through this
18 witness that she received a phone call from Mr. Dorfman and
19 that certain things were said in that phone call and they
20 want to use that to prove the truth of the things that were
21 in fact said and establish them beyond a reasonable doubt, if
22 she can, that the facts she relates are true and, therefore,
23 a crime has been committed by Mr. Dorfman.

24 Now, your Honor, what they are doing without
25 laying a foundation then is getting into testimony, the

1 rankest of hearsay. They have not shown one iota of evidence,
2 either circumstantial or direct, that this woman knows the
3 voice of Dorfman if she heard it or that there are any
4 extraneous circumstances which would lead the Court or the
5 jury to conclude that there was enough to substantiate the
6 fact that it was Dorfman who made this phone call.

7 Now, for example, if a phone call is made by this
8 woman to a phone number registered in the name of Dorfman and
9 she says, "May I speak to Mr. Dorfman?"

10 And the voice at the other end says, "Wait a
11 minute, I'll get him." And then someone comes to the phone
12 and says, "This is Mr. Dorfman." And she starts a conversa-
13 tion, there is some basis, some courts have held, to lend
14 credibility to the fact that this is Dorfman on the other end
15 of the call.

16 Here we obviously have the other extreme where
17 she is going to testify that somebody made a call. She has
18 never -- the question has never been asked of her whether she
19 could recognize Mr. Dorfman's voice -- she is going to say,
20 "Now, I listened on the phone," and I am looking at some of
21 these Jencks statements in the very brief time that I had at
22 lunch, she is going to say, "That this voice said, 'It's
23 Dorfman.'"

24 She doesn't know Dorfman. There has never been
25 any substantiation of the fact that she knows Dorfman or ever

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1 heard his voice. So here we have a complete strange voice
2 calling her number and saying, "This is Dorfman."

3 Well, for all I know, that could have been Mr.
4 Neal calling, for all she knows it could have been anybody
5 calling. There has been no circumstance laid here which would
6 qualify this woman to say before this jury that she received
7 a phone call or a phone call was received at these premises
8 from this individual sitting right here, Allen M. Dorfman.

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1 Now, it may be that someone called saying it was
2 Dorfman but that isn't proof that it was this man sitting
3 right here who made the call and there is no evidence here
4 which substantiates that it was Dorfman. We have here the
5 most rankest of hearsay, which the government is now going to
6 try to prove as its crucial fact against this man.

7 Now, I have read these statements and I know that
8 this woman is now going to try to say that a voice called
9 her on the telephone and that voice identified himself as
10 being Mr. Dorfman. And that voice according to her Jencks
11 statement read a list of names which she can't identify.
12 This may I say to the Court the government wants to establish
13 as the very act of aiding and abetting Nicholas J. Tweel in
14 the endeavor that was charged in count four.

15 It is the heart of their proof. They want to put
16 it in without any basis that this was the man who made that
17 call whether it was made or not, that is a different point.
18 But to allow this jury to hear that this woman is going to
19 testify that a voice calling himself Dorfman read this list
20 will so prejudice this jury with otherwise than competent
21 evidence, this is the most incompetent evidence and no
22 foundation has been laid by the government to establish that
23 it is competent.

24 Now, Your Honor, if Your Honor wishes, I most
25 urgently, fervently, suggest to the Court that the Court take

1 the time to read my brief and read the cases because this is
2 the heart of the government's case against this defendant.
3 We've been sitting here for ten days and I have listened to
4 many, many things that don't pertain one iota to the defendant
5 Dorfman. This is the first time I have heard his name spoken
6 and the government wants to use the rankest of hearsay without
7 any foundation to prove the very heart of the charges against
8 him and I suggest to Your Honor that it would be clear
9 reversible error at this point or at any other point unless
10 evidence was established to prove that it was in fact Dorfman
11 calling to let this go to the jury.

12 MR. HOOKER: If Your Honor please, these gentlemen
13 object before we get into the evidence really.

14 MR. SILETS: Absolutely, Your Honor.

15 MR. HOOKER: We're going to prove by this lady
16 that Tweel got a call from a man who identified himself as
17 Dorfman. They talked and then later the same man called,
18 the Defendant Dorfman called back and they had a telephone
19 conversation in which this witness was asked by Mr. Tweel to--
20 to which this witness was asked by Mr. Tweel to listen on an
21 extension and she heard the conversation both between the
22 Defendant Dorfman and the Defendant Tweel.

23 Now, we submit, if Your Honor please, that that
24 is not hearsay. That this objection is an argument as to
25 the weight of the evidence and doesn't have any bearing on

1 its admissibility.

2 We expect to show that a person called, identified
3 himself as Dorfman, calling for Mr. Tweel, and later that
4 the same person called back, in accordance with that
5 conversation and they had a conversation to which she
6 listened over the phone at Tweel's direction and took down
7 certain portions of the conversation in shorthand. Rather,
8 took it down. I don't know whether shorthand or longhand.
9 It was actually proper names. So we submit under those
10 circumstances that her evidence is clearly admissible.

11 MR. SILETS: Your Honor,--

12 THE COURT: All right.

13 MR. SILETS: I would like to say now if I was
14 doubtful about this proposition before, I am now convinced
15 because Mr. Hooker's offer to prove or he has in effect
16 offered of proof here, he has not stated one single fact that
17 the government will ultimately prove which will show that
18 the voice at the other end of this call was Allen Dorfman.
19 The Allen Dorfman sitting in the courtroom.

20 Now, this is one of the obligations the government
21 has in any indictment and that is to prove that the man
22 charged with the crime is the individual sitting in the
23 courtroom. That is why the government from time to time has
24 a witness identify the person as being the one they had the
25 conversation with and saying that this is in fact the

1 defendant sitting in the courtroom.

2 Now, Mr. Hooker wants to prove to this jury and
3 to the Court by some unknown basis that a voice which he
4 does not offer any proof, which he will establish to tie it
5 up to this individual, did these things.

6 Now, this is so inflammatory, so prejudicial,
7 that it is going to be clear reversible error. Now, I know
8 Your Honor, I don't mean to have this sound as though it is
9 a bare threat. I don't mean that at all. It just would seem
10 to me destructive of all we've been trying to do throughout
11 this, this case, and that is to keep a clean, clear record and
12 a fair trial.

13 If this were to go to the jury now without any
14 foundation laid by Mr. Hooker or the government, that this
15 conversation that she is going to relate was a conversation
16 in which this man participated, then this man has effectively
17 been precluded of all of his rights to a fair trial.

18 Now, I have filed with the Court an extensive
19 brief. This is a matter of the utmost importance to this
20 defendant because if it goes to the jury and the government
21 does not connect it up as being this man who made this
22 conversation, there is nothing this Court can do to drive it
23 out of the minds of this jury that it was in fact Allen M.
24 Dorfman sitting in the courtroom who did this no matter what
25 kind of instruction you give. Because that is all the

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1 government has against this man. That is the heart of their
2 proof against him, the fact that he or this voice read a
3 list over the phone, that is what she is going to say. Now,
4 if the Court wishes I think I can establish by calling this
5 woman back that she has never met him. She has never heard
6 his voice and she has never seen him.

7 THE COURT: Anything further? If not, let's take
8 about a five or ten minute recess.

9 (Thereupon, at 2:10 p. m., court was in recess.)

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1 THE COURT: Gentlemen, I believe the proper
2 procedure at this time would be to have the witness come
3 back in the absence of the jury and see what, if any, founda-
4 tion the government feels that they have for introducing this
5 testimony.

6 MR. HOOKER: Of course, it's clearly admissible
7 as to the Defendant Tweel, if your Honor please.

8 THE COURT: Oh, yes.

9 MR. HOOKER: On the present basis.

10 THE COURT: No question about that.

11 MR. HOOKER: And we have other means of con-
12 necting it up and will connect it up as to the Defendant
13 Dorfman by other proof following.

14 THE COURT: Beg your pardon?

15 MR. HOOKER: We would have other proof following
16 this to connect it to the Defendant Dorfman, as, for example,
17 the--

18 THE COURT: (Interposing) Put in your other
19 proof if you have other proof. Why select this order of
20 proof?

21 MR. HOOKER: Well, because it was, we thought
22 it was a natural order, if your Honor please, it follows
23 this conversation at the Sportsman Bar.

24 THE COURT: Well, the cases seem to hold, Mr.
25 Hooker, that in the absence of the some means of identifying

1 the other party other than just his mere statement, unless
2 the witness knows the identity of the other party or unless
3 there is some proof that was placed at his telephone or some
4 other means of identifying it, just the mere statement of the
5 witness on the other end of the line that he is so-and-so is
6 inadmissible hearsay.

7 MR. HOOKER: Well, we--

8 THE COURT: (Interposing) As to that party.

9 MR. HOOKER: We proved the call between the two
10 telephones. We would be willing to go on now if the Court
11 would instruct the jury not to consider it as to the Defendant
12 Dorfman unless it is connected up.

13 MR. ALEXANDER: If it please the Court, the same
14 proof, the same objection will be raised to the Defendant
15 Tweel on Telephone calls to him.

16 THE COURT: Well, if the Court understands the
17 proper rules of evidence whatever Mr. Tweel said or did in
18 this witness' presence would be admissible against Mr. Tweel
19 and whatever this witness did or said to Mr. Tweel would be
20 admissible.

21 Now, unless there is some further foundation
22 laid as to the identity of the person on the other end of
23 the line, other than his mere statement as to who he was,
24 that testimony would not be admissible as to him, as the
25 Court understands the cases.

1 MR. HOOKER: But we would be entitled to prove
2 as a circumstance with a statement to the jury that it would
3 have to be connected up.

4 MR. SILETS: No.

5 MR. HOOKER: We would be entitled to prove that
6 the man called there and identified himself as Dorfman.

7 MR. SILETS: That is putting in the very obnoxious--

8 THE COURT: (Interposing) Well, if you wish to
9 examine the witness further on this in the absence of the
10 jury I will allow you to do this at this time, Mr. Hooker,
11 so the Court can form--

12 MR. SILETS: (Interposing) Your Honor, might I
13 just--I don't want to take Mr. Alexander's thunder away from
14 him, but on the proposition of even--

15 THE COURT: (Interposing) Don't take anybody's
16 thunder, we have had quite a bit of that.

17 MR. SILETS: Now, on the proposition of whether
18 it's even admissible against Mr. Tweel, if she said something
19 on the phone in the presence of Mr. Tweel to this voice and
20 Tweel was present that might be admissible as to Tweel, if
21 he didn't hear what the voice was saying to her, what that
22 voice said to her is not admissible.

23 THE COURT: Well, all right, gentlemen. Let's
24 have the witness examined further in the absence of the jury.

25 MR. HOOKER: All right.

1 MR. NEAL: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. NEAL: As Mr. Hooker says, in any event, we
4 have been proceeding this way all along. All this testimony
5 is certainly admissible as to Mr. Tweel. If it's not, if
6 your Honor doesn't think it is connected up sufficiently with
7 Mr. Dorfman we will do that and the Court can say that it's
8 not admissible as to Mr. Dorfman until connected up and we
9 will connect it up.

10 MR. SILETS: Your Honor--

11 MR. NEAL: We have to proceed step by step, we
12 can't just take--we just can't put everything in at once.

13 THE COURT: I appreciate that fact but, on the
14 other hand, that doesn't permit the Court to disregard the
15 rules of law relating to evidence as appears rather clearly
16 to have been laid down. Sometimes it requires that you
17 proceed in a rather difficult manner.

End Tk 2318
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1 MR. HOOKER: We are entitled to prove it and cur
2 position is that we would be entitled to prove it now under
3 a proper instruction that it would be competent as to the
4 Defendant Dorfman if connected up.

5 THE COURT: Let's see what, let's see what the
6 witness may have to say.

7 MR. HOOKER: All right, sir, I'm just going to
8 ask her about the telephone conversation. There is a good
9 deal more that I want to examine her on.

10 THE COURT: Yes. This relates what, if any,
11 knowledge she has, acquaintance with Mr. Dorfman, his voice
12 or how the calls were placed.

13 MR. SILETS: Your Honor, so that we may have the
14 ground rules laid down very precisely what Mr. Hooker is
15 asking here on this voir dire examination, it is precisely
16 for the determination of whether she can identify Mr. Dorfman
17 and whether she can identify the voice and not going into
18 the subject matter of the conversation because I don't want
19 in this proceeding to allow him to perfect any testimony
20 that she made before the jury because if she doesn't remember
21 it or she doesn't know anything about it he may refresh her
22 recollection inadvertently. May we understand that the only
23 thing we are going to inquire about is as to the function of
24 her relating the substance of the conversation?

25 THE COURT: Well, we're in the absence of the

1 jury, gentlemen, trying to settle the issue.

2 (Thereupon, in the absence of the jury and four
3 alternates, Miss Hazel Fulton was recalled to the witness
4 stand by the United States of America, and the following
5 proceedings were had to-wit:)

6 BY MR. HOOKER:

7 Q Miss Fulton, I want to ask you some more about
8 the telephone call. Do you recall about when it was that
9 there was any telephone conversation by Mr. Tweel in your
10 presence with any other person may or may not have identified
11 himself as Dorfman? Do you remember about when the first
12 such conversation was?

13 A The phone calls were in November or the first of
14 December.

15 Q First of December, now, just tell His Honor how
16 that arose, who called who.

17 A Well, Mr. Dorfman called.

18 Q And did you answer the phone?

19 A I don't know if I answered the phone the first
20 time, but the call was turned over to me.

21 Q Well, in any event there was a call there the
22 first time and did Mr. Tweel have a conversation?

23 A Yes, he did.

24 Q Now, was that the conversation that you listened
25 to or was it another?

- 1 A That I listened to?
- 2 Q Yes, that you were told to listen to? Was it the
- 3 first one or subsequent one?
- 4 A This one call is the one I can remember.
- 5 Q The one you can remember and that is the one you
- 6 were told to get on the line?
- 7 A Yes, sir.
- 8 Q Do you remember whether you answered the telephone
- 9 when it rang or whether Mr. Tweel did?
- 10 A Mr. Tweel did not answer.
- 11 Q And you answered it?
- 12 A Either myself or my assistant.
- 13 Q Your assistant.
- 14 MR. SILETS: Would you have her identified?
- 15 BY MR. HOOKER:
- 16 Q Who was your assistant?
- 17 A I can't remember what girl was there at the time.
- 18 Q I see. Now, then, did you hear Mr. Tweel's end
- 19 of that conversation, the beginning of it?
- 20 A No, sir.
- 21 Q Did you get on the line?
- 22 A Yes, sir.
- 23 Q Who told you to get on the line?
- 24 A Mr. Tweel.
- 25 Q And you got on the line and listened over an

1 extension?

2 A I did not listen to his conversation.

3 Q I understand, but did you listen to the man on
4 the other end of the line?

5 A Yes, sir.

6 Q And did that man identify himself?

7 MR. SILETS: I am a little confused, Mr. Hocker,
8 with the Court's indulgence, she has said that she did not
9 listen to the conversation between Mr. Tweel and the other
10 man?

11 MR. HOOKER: The other man. She got on the line.

12 THE COURT: Let's proceed, gentlemen.

13 BY MR. HOOKER:

14 Q I'm asking you if after you got on the line if
15 the other man on the end of the line, that is the man not in
16 Tweel's office, but the other end of the line identified
17 himself to you?

18 A At the time I got on the line the second time,
19 no.

20 Q Did he ever identify himself?

21 A Yes, sir.

22 Q When?

23 A When I asked who was calling Mr. Tweel.

24 Q Was this the same conversation or a subsequent one?

25 A It was the same conversation.

- 1 Q Same conversation you asked him who was calling
2 Mr. Tweel?
- 3 A Yes, sir.
- 4 Q And what did he say?
- 5 A He said Allen Dorfman.
- 6 Q Allen Dorfman, then did Mr. Tweel answer the
7 phone?
- 8 A Yes, he did.
- 9 Q And what did Mr. Tweel say?
- 10 A I didn't listen to Mr. Tweel's conversation.
- 11 Q Well, did you hear whether he called him by name
12 or not?
- 13 A No, sir.
- 14 Q You did not?
- 15 A No, sir.
- 16 Q Then you got back on the line?
- 17 A Yes, sir.
- 18 Q And what did you hear when you got back on the
19 line?
- 20 A The gentleman gave me some names to take down.
- 21 Q Gave you some names, do you remember how many
22 names that he gave you?
- 23 A There were several names.
- 24 Q Did he give you anything else but names?
- 25 A Addresses.

- 1 Q Addresses?
- 2 A Yes, sir.
- 3 Q And did you take them down?
- 4 A Yes, sir.
- 5 Q Now, when the conversation was concluded, did
- 6 Mr. Tweel get back on the line before the conversation
- 7 ended?
- 8 A No, sir.
- 9 Q Was there anything further said except just giving
- 10 you the names by the man on the other end of the line to you?
- 11 A That is all.
- 12 Q That is all?
- 13 A Yes, sir.
- 14 Q Now, was there any more calls that same day or
- 15 night?
- 16 A To the best of my knowledge he called Mr. Hall.
- 17 Q Ma'am?
- 18 A Mr. Hall.
- 19 Q There was a call from Mr. Hall or to Mr. Hall?
- 20 A To Mr. Hall.
- 21 Q Did you put it in?
- 22 A To the best of my knowledge, I did.
- 23 Q You did?
- 24 A Yes.
- 25 Q You know that you did?

1 A Yes, sir.

2 Q And where did you call Mr. Hall?

3 A Where?

4 Q Yes, what city?

5 A Nashville, Tennessee.

6 Q Nashville, Tennessee.

7 THE COURT: We're getting--

8 MR. HOOKER: (Interposing) All right, I'm not
9 going into that.

10 THE COURT: Miss Fulton, what is Mayflower
11 Distributing Company?

12 THE WITNESS: It is a wholesale tobacco company.

13 THE COURT: And you went to work there in the
14 middle of October, 1962?

15 THE WITNESS: Yes, sir.

16 THE COURT: Mr. Tweel was working there at that
17 time?

18 THE WITNESS: Mr. Tweel was more or less managing
19 the place.

20 THE COURT: More or less managing the place?

21 THE WITNESS: Yes.

22 THE COURT: Now, did Mr. Tweel ever ask you to
23 place a call to anyone by the name of Dorfman?

24 THE WITNESS: Yes, sir.

25

1 THE COURT: Was that before or after this con-
2 versation you have just described where you took some names
3 down?

4 THE WITNESS: Your Honor, I can't remember.

5 THE COURT: Did you yourself place a call?

6 THE WITNESS: Yes, sir.

7 THE COURT: And did the person identify himself
8 on the other end of the line?

9 THE WITNESS: I can't remember.

10 THE COURT: Well, the voice at the time that you
11 took any names down, did you recognize that voice in any way
12 as being a voice you had heard before?

13 THE WITNESS: I had spoken with Mr. Dorfman
14 several times, I took it to be Mr. Dorfman, he identified
15 himself as Mr. Dorfman.

16 THE COURT: Well, was that as a result of your
17 having placed any calls to him?

18 THE WITNESS: Yes, sir.

19 THE COURT: And as a result of your having placed
20 calls to him, did you recognize his voice at the time that
21 you took the names down as being the same voice that had
22 identified himself?

23 THE WITNESS: Well, your Honor, it was perhaps
24 more or less in my mind that it was Mr. Dorfman, it was a
25 passing thought. I would ask for Mr. Dorfman, he would

1 answer, I would feel that it was Mr. Dorfman.

2 THE COURT: Well, as a result of that did you
3 identify the voice at the time that you took the names down
4 as being the same voice?

5 THE WITNESS: I didn't think anything about it.

6 THE COURT: Well, would you if you thought about
7 it?

8 THE WITNESS: I can't answer that, sir, I don't
9 know.

10 THE COURT: All right.

11 BY MR. HOOKER:

12 Q Do you know where that call was from, the one in
13 which the names were read?

14 A No, sir, I don't.

15 Q Ma'am?

16 A No, I don't.

17 Q What city?

18 A The operator just said, "Long distance."

19 Q "Long distance." Now, you told His Honor some-
20 thing about these previous telephone calls that you had had to
21 Mr. Dorfman?

22 A Yes.

23 Q Ma'am?

24 A Yes, sir.

25 Q When did they occur?

- 1 A I don't know if it was before or after this one
2 call, but I am quite sure there was previous calls to and
3 from Mr. Dorfman.
- 4 Q Mr. Dorfman and Mr. Tweel?
- 5 A Yes, sir.
- 6 Q Do you remember how many there were?
- 7 A No, sir.
- 8 Q Do you know what cities they were between?
- 9 A When I would place a call for Mr. Tweel it would
10 be to Chicago.
- 11 Q It would be to Chicago. And did you get any
12 other than the one that you described from a man who represented
13 himself as being Dorfman?
- 14 A Yes, there has been other calls.
- 15 Q Do you know how many of them there were?
- 16 A No, sir.
- 17 Q Do you know from what city they were made?
- 18 A No, sir.
- 19 Q On each of these occasions when you either called
20 for Mr. Dorfman or if he called back for Mr. Tweel was the
21 voice the same or different?
- 22 A I don't know, I can't answer that, it didn't mean
23 anything to me.
- 24 Q Now, the evening or the night -- was that at
25 night when you had this call about the names?

- 1 A It was late evening or night, yes.
- 2 Q Did you all work any at nights during that period?
- 3 A Yes, sir, we did.
- 4 Q You did. Now, on that particular evening was
- 5 there any difficulty with the telephone connection on any of
- 6 these calls?
- 7 A This one call Mr. Dorfman -- I could not under-
- 8 stand Mr. Dorfman.
- 9 Q You understood Mr. --
- 10 A (Interposing) I could not understand him.
- 11 Q Well, why do you say it was Mr. Dorfman, why do
- 12 you refer to it as Mr. Dorfman?
- 13 A He identified himself.
- 14 Q As Mr. Dorfman?
- 15 A As Mr. Dorfman.
- 16 Q And you couldn't understand him?
- 17 A No, sir.
- 18 Q And what did you do?
- 19 A Mr. Dorfman said that he would call back.
- 20 Q That he would call back?
- 21 A Yes, sir.
- 22 Q And did he call back?
- 23 A Yes, sir, he did.
- 24 Q How long after the first call?
- 25 A A few minutes after the first.

1 Q Did you answer the call?

2 A The call went through me, I don't know.

3 Q Through you?

4 A Yes.

5 Q Was it the same man that had called before when
6 he had the bad connection?

7 A Yes, sir.

8 Q That had said he was Allen Dorfman?

9 A Yes, sir.

10 Q And that is the conversation in which you listened
11 to the names?

12 A Yes, sir.

13 MR. HOOKER: We think that makes it admissible,
14 if your Honor please.

15 MR. SILETS: Your Honor, may the witness be
16 excused?

17 THE COURT: All right, step out.

18 (Witness temporarily excused.)

19 MR. SILETS: Your Honor, it's patently obvious
20 that this woman didn't hear the phone conversation between
21 Tweel and the individual representing himself as Allen Dorf-
22 man. She was put back on the stand and she took a list of
23 names.

24 Your Honor asked her very thoroughly about prior
25 and subsequent conversations. Mr. Hooker asked her. She said

1 she didn't know, she couldn't remember, it was her reflection,
2 her mental attitude about this thing was obvious. She just
3 naturally assumed that it was Dorfman.

4 She had never had any qualms about that, but that
5 doesn't make it Dorfman.

6 She said she took this call. The call came
7 through her from one of her assistants. First she couldn't
8 hear him because it was a bad connection, then she said it
9 was the same voice, then she came -- she gave the call to Mr.
10 Tweel, who talked. She didn't hear what Tweel said. He
11 gave the call back to her, she took a list of names.

12 Nowhere has the government even indicated by the
13 slightest minute -- even as Wigmore says, the scintilla of
14 evidence, that she could identify that voice.

15 Their offer of proof falls far short of what the
16 cases require.

17 THE COURT: All right.

18 MR. NEAL: If your Honor please, this I believe
19 the Court brought out that this lady had called Dorfman,
20 had placed calls to a man named Dorfman and talked to this
21 man over the phone at Tweel's direction, that she is not
22 going to say definitely, of course, but she is going to have
23 to say, she don't have to say definitely, all she needs, as
24 Mr. Silets first said, is a corroborating circumstance that
25 she had placed calls to Dorfman from the Defendant Tweel, she

1 had talked to the man.

2 She had talked to him apparently prior to this
3 particular call and subsequent to the call. She said she
4 received this call. She assumes it appeared to be Tweel --
5 it appeared to be Dorfman, and also, your Honor, she received
6 two calls that night, one from Dorfman, one from the person,
7 from the man who identified himself as Dorfman, the bad
8 connection, a second call from a man who said it was Dorfman.
9 She received the call, she turned it over to Mr. Tweel, the
10 Defendant Tweel. He said, "This is Dorfman," the Defendant
11 Tweel talked to the man.

12 The only inference there, of course, your Honor,
13 is if it wasn't Dorfman, Tweel would have said it wasn't
14 Dorfman. All of this, your Honor, we believe is that slight
15 corroboration that is necessary under these circumstances.
16 Upon that we cite United States versus Bucur, it's 194 F. 2nd
17 297 at page 330, Seventh Circuit case, 1952, but, in any event
18 your Honor, we are entitled to put this proof on quite clearly
19 even if we have to take an instruction from the Court that
20 it's not to be considered as to Dorfman unless it's connected
21 up and we will connect it up later.

22 THE COURT: Well.

23 MR. NEAL: That is the least --

24 THE COURT: (Interposing) Well, gentlemen, I
25 believe the proper procedure at this point is that I will

1 allow you either, if you desire to go ahead with this witness,
2 I will allow you to go ahead with this witness and she can
3 testify as to what she did or what she said to Mr. Tweel or
4 what Mr. Tweel did or said to her.

5 I don't believe that I should at this time allow
6 her to testify as to what anyone on the other end of the
7 line may have said, including identifying himself. We will
8 write this record up and the Court will study it and see.

9 MR. NEAL: If your Honor please, rather than break
10 the continuity of it, I think we'd prefer to withdraw this
11 witness and offer the telephone witness in evidence.

12 THE COURT: All right.

13 MR. SILETS: Your Honor, of course, the admonition
14 to the witness not to discuss her testimony will hold true.

15 THE COURT: Yes, I have so instructed her.

Tk 25 End 15

Tk 26 fls

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1 MR. ALEXANDER: Did your Honor instruct her not
2 to discuss her testimony? I didn't catch that.

3 THE COURT: Yes, sir, I instructed her when she
4 went out the first time not to discuss her testimony or
5 permit anyone to discuss her testimony with her.

6 MR. SILETS: Your Honor, when the jury is called
7 back, would your Honor instruct the jury not to consider the
8 testimony that has gone on so far?

9 THE COURT: Well, there is nothing that has gone
10 in so far incompetent that the Court is aware of.

11 MR. NEAL: Will your Honor instruct the jury that
12 this witness will be called after some preliminary proof?

13 THE COURT: Yes, sir, I will instruct the jury
14 that the Court, it was necessary for the Court to reserve
15 decision at this time and vary the order of proof.

16 MARSHAL MANSFIELD: You want the jury back now,
17 your Honor?

18 THE COURT: Yes.

19 MR. NEAL: Would it be appropriate now to take
20 a five or ten-minute recess, your Honor? Naturally we are
21 going to--

22 THE COURT: (Interposing) What did you gentlemen
23 do while the Court was out? Were you in recess or not?

24 MR. BERKE: We stayed in attendance, your Honor.

25 THE COURT: Very well.

1 MR. NEAL: Just to line them up, your Honor, it
2 won't be very long.

3 THE COURT: All right, take a 10-minute recess.
4 (Thereupon, at 2:55 P.M., court was in recess.)

End Tk 26
Tk 26A fls.

5 MR. NEAL: May it please the Court, this next
6 witness is from the Chicago Telephone Company. We want to
7 put the necessary records to corroborate Miss Fulton, and it
8 might be necessary, we don't know, it might be necessary for
9 us to call her back at some later stage in order to do that.

10 THE COURT: All right.

11 MR. NEAL: We want to put her on briefly and then
12 go back to Miss Fulton.

13 THE COURT: You want to put who on briefly?

14 MR. NEAL: A representative from the Chicago
15 Telephone Company and as Mr. Silets said, the necessary cor-
16 roborative circumstances for calling Mr. Tweel.

17 THE COURT: Put on whatever witness you desire.

18 MR. NEAL: We call Mary Meyer.

19 (Thereupon, a witness assumed the witness box.)

20 MR. NEAL: You can't say, your Honor, that we
21 haven't had an attractive group of witnesses.

22 THE CLERK: Hold up your right hand. Do you
23 solemnly swear the evidence you give in this case will be the
24 truth, the whole truth, and nothing but the truth, so help
25 you God?

1 THE WITNESS: Yes, sir.

2 THE CLERK: Have a seat, ma'am.

3 (Thereupon, the jury of 12 and 4 alternates were
4 brought into the courtroom and the following proceedings
5 were had, to-wit:)

6 THE COURT: Ladies and gentlemen, the Court from
7 time to time has to rule on the admissibility of evidence and
8 upon other appropriate matters in the case, and to do that
9 properly the Court has to do quite a bit of research. I try
10 to do that at night in order not to take up the time of the
11 case and time of the trial. The Court, therefore, has
12 requested time to consider some of these matters and to
13 consider appropriate authorities and read appropriate authori-
14 ties this evening and the order of proof is, therefore, being
15 varied at this point.

16 MRS. MARY E. MYERS,
17 a witness called at the instance of the United States of
18 America, having been first duly sworn, was examined and
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. NEAL:

22 Q Would you state your name, please?

23 A Mary E. Myers.

24 Q Mary E. Myers?

25 A Yes, sir.

1 Q Would you spell Myers for us, please?

2 A (Spelling) M-y-e-r-s.

3 Q (Spelling) M-y-e-r-s?

4 A Yes, sir.

5 Q Is it Miss?

6 A Mrs.

7 Q Mrs. Myers, would you tell us where you are from?

8 A Chicago, Illinois.

9 Q How long have you lived in Chicago?

10 A For approximately 38 years.

11 Q I should have asked that differently. That is
12 hard to believe. Where do you work, Mrs. Myers?

13 A I work for the Illinois Bell Telephone Company
14 in Chicago.

15 Q How long have you worked there?

16 A Nineteen years.

17 Q What positions or jobs have you held with the
18 Illinois Telephone Company?

19 A Well, I began my career as an operator and from
20 an operator I went into supervising. I became a group chief
21 operator. Chief operator. I have done personnel work,
22 employment, and worked in the accounting department, plant
23 department, and commercial department, and to my present job.

24 Q Are you the custodian of the records of your
25 company?

1 A Yes, I am.

2 MR. NEAL: We would like to have marked several
3 records here Government's Exhibit No. 54, I believe, is it?

4 THE COURT: What is your present job?

5 THE WITNESS: Special agent.

6 MR. NEAL: Government Exhibit 55, 56, 57, 58 and
7 59.

8 (The telephone company records referred to above
9 were marked Government's Exhibit Nos. 54, 55, 56,
10 57, 58 and 59 respectively, Witness Mrs. Meyers,
for identification only.)

11 BY MR. NEAL:

12 Q I hand you what has been marked for identification
13 as Government's Exhibit No. 54, through 59, and ask you if
14 you recognize those?

15 A Yes, I do.

16 Q Are they records of the company?

17 A Yes, sir, they are.

18 Q Are they records made in the regular course of
19 the business of your company?

20 A Yes.

21 Q And is it the regular course of your company's
22 business to make those records?

23 A Yes, it is.

24 Q And to transcribe the events there on or about
25 the time of the occurrence?

1 A Yes, sir.

2 MR. NEAL: We offer Government's Exhibit No. 54
3 through 59 into evidence and show them to defense counsel.

4 MR. SILETS: May I have a moment, your Honor?

5 THE COURT: All right.

6 MR. NEAL: These records were turned over to
7 defense counsel approximately a week or ten days ago, or
8 copies thereof.

End Tk26A 9
Tk 27 fls.

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1 MR. SILETS: May I inquire for a moment, Your
2 Honor, about these cards?

3 THE COURT: All right.

4 MR. SILETS: Mrs. Myers, you stated that you kept
5 the records for the Illinois Bell system?

6 THE WITNESS: Illinois Bell Telephone Company,
7 yes.

8 MR. SILETS: Yes, ma'am. They have phones through-
9 out the state of Illinois, don't they?

10 THE WITNESS: Yes, they do, sir.

11 MR. SILETS: You don't keep the records for the
12 whole state of Illinois do you?

13 THE WITNESS: I am custodian of the records, yes.

14 MR. SILETS: For the whole state?

15 THE WITNESS: Yes, sir.

16 MR. SILETS: And they are kept under your super-
17 vision?

18 THE WITNESS: Yes, sir, they are.

19 MR. SILETS: Now, you are appearing here pursuant
20 to a subpoena.

21 THE WITNESS: Yes, sir, I am.

22 MR. SILETS: Do you have the subpoena with you?

23 MR. NEAL: Your Honor, is this--

24 THE COURT: (Interposing) What does that have to
25 do with the records?

1 MR. SILETS: Your Honor, I would like to know if
2 she has brought other records with her.

3 THE COURT: Well, that is a matter of cross
4 examination. We are talking about these records.

5 MR. SILETS: I will proceed. I don't want to
6 delay this. Do you have any personal knowledge as to how
7 these cards, these particular six or seven cards, were made
8 out?

9 THE WITNESS: Yes, I do.

10 MR. SILETS: You have personal knowledge?

11 THE WITNESS: Yes, sir, I do.

12 MR. SILETS: Did you make them out yourself?

13 THE WITNESS: No, sir, I did not.

14 MR. SILETS: Will you explain to the jury what
15 personal knowledge you have as to these cards that I have in
16 my hand.

17 THE WITNESS: By "personal" do you mean, explain?

18 MR. SILETS: You, yourself.

19 THE WITNESS: Well, as to the actual--, I didn't
20 make them out, no.

21 MR. SILETS: The first time you saw them was when
22 they were pulled out of the records of your company.

23 THE WITNESS: Correct.

24 MR. SILETS: So--

25 THE WITNESS: And I--

1 MR. SILETS: (Interposing) So you have no
2 personal knowledge as to the truth or falsity, the correct-
3 ness or the errors that may be shown on these cards, is that
4 right?

5 THE WITNESS: Go through that one more time.

6 MR. SILETS: Yes, ma'am. You do not have any
7 personal knowledge as to the truth or falsity of the matters
8 shown on these cards or whether they are correct or incorrect.

9 MR. NEAL: Your Honor, isn't this a matter of
10 cross examination?

11 THE COURT: Yes, I don't think that has anything
12 to do with the admissibility of the cards, this is a cross
13 examination.

14 MR. SILETS: Sir, I don't want to detain the
15 Court or the jury, but this pertains to whether these were
16 prepared under her supervision and whether, if they were
17 prepared under her supervision, whether she has knowledge of
18 whether they are correct.

19 THE COURT: Those are matters you can cross
20 examine on. I don't think that goes to the admission of the
21 record.

22 MR. SILETS: I will reserve that. Thank you
23 very much.

24 THE COURT: All right, sir.

25 MR. SILETS: I, of course, enter an objection to

1 their being received into evidence and until such time as the
2 proper foundation has been laid. I don't believe it has been
3 done as yet.

4 THE COURT: Overrule the objection.

5 MR. NEAL: If a person who is a lady who has
6 worked in practically every aspect of the business isn't
7 qualified--

8 THE COURT: (Interposing) I have overruled the
9 objection. Let's move along.

10 MR. NEAL: I offer them in evidence, Your Honor.

11 THE COURT: All right, allow them to be received.

12 (The documents previously marked Government's
13 Exhibits Nos. 54 through 59, witness Mrs. Myers,
for identification were received in evidence.)

14 BY MR. NEAL:

15 Q I will hand you Government's Exhibit No. 54. I
16 will just ask you what that shows. Just tell us now so that
17 I can understand and the members of the jury can understand,
18 not being, I assume not being telephone people, just tell us
19 what it shows.

20 A All right. I made notes, Your Honor, I can read
21 from the ticket but--

22 THE COURT: (Interposing) Just testify from the
23 record, not from your notes.

24 THE WITNESS: All right.

25 MR. NEAL: Your Honor, she made the notes herself

1 from the records. It would be expeditious to let her read her
2 notes. I think that is proper if she made them.

3 MR. SILETS: Your Honor, this--

4 THE COURT: (Interposing) Well, I think she will
5 testify from these records, that is what she is being asked
6 to testify from.

7 BY MR. NEAL:

8 Q Very well.

9 A It's a record of a call from Dearfield, Illinois,
10 the telephone number 9455980, was a person to person call.

11 THE COURT: Excuse me, not quite so fast, 945 what?

12 THE WITNESS: 5980.

13 BY MR. NEAL:

14 Q Do you know whose telephone number that is in
15 Dearfield?

16 A Yes, I do.

17 Q Whose is it?

18 A It's listed for an Allen M. Dorfman.

19 Q Allen M. Dorfman?

20 A Right.

21 MR. SILETS: Your Honor, I can't see the witness
22 and it may be that the witness is in fact referring to some
23 notes after the Court had admonished her not to.

24 MR. HOOKER: Reading right off the record.

25 MR. NEAL: If Mr. Silets can't see this witness

1 I suggest he move around.

2 MR. HAGGERTY: Let the record show that Mr. Neal
3 is duly impressed.

4 THE COURT: All right.

5 A All right. To Huntington, West Virginia, on the
6 date of 10-21-1962.

7 Q October 21st, 1962?

8 A Yes. It is a person call to a Nick Tweel, it
9 went to his residence, which is an unpublished number. The
10 call was indicated as an emergency and it was from Dorfman
11 and we passed it to the chief operator at 10:25 a. m. because
12 the call was an emergency, it was to an unpublished number.
13 When it's an unpublished number we, in our company, we do
14 not give out the telephone number to the party who is making
15 the call. We will call the distant party and we will tell
16 them we have a call from the party who is placing the call,
17 will you accept it.

18 If the party says yes we connect the customers.
19 We do not give the number. The call was placed at 10:25 a. m.
20 to the chief operator, the line was out of order, at 10:29
21 a. m. we were requested to try to call again. We tried at
22 10:49 a. m. The party talked on the call at 10:51 a. m.,
23 37 seconds, the call was completed at 10:5532.

End Tk 27

Tk 28
follows

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1 Q And the call was from Dorfman to Tweel. Is that
2 correct?

3 A Correct.

4 MR. SILETS: Your Honor, more properly, if I may
5 say, it is from one phone to another?

6 THE COURT: Well, she can say what the records
7 reflect.

8 BY MR. NEAL:

9 Q Does the record reflect a call from Dorfman to
10 Tweel?

11 A Yes, it does.

12 Q And it is from the number you know to be Dorfman's
13 number?

14 A Yes, sir.

15 Q Now, would you put that one aside a moment and I
16 hand you Government's Exhibit No. 55 through 59 and would you
17 take No. 55 first. Would you tell us what Government Exhibit
18 No. 55 is?

19 A No. 55 is a customer's toll credit record. This
20 is a record of the name of the company that a credit card is
21 issued to, a Bell system credit card. It indicates the number
22 of the credit card, the credit card number was 943-00-24-A-
23 K-85.

24 Q A-K-85?

25 A Yes, sir. Am I going too fast?

1 Q A little bit.

2 A The holder's name was Allen M. Dorfman.

3 Q Now, who was authorized to use that credit card?

4 A According to Illinois Bell practice, Allen M.
5 Dorfman.

6 Q And who else?

7 A Only he.

8 Q Only Allen M. Dorfman. Now, was that card in
9 existence in October, November, December, 1962?

10 A Yes, sir, it was.

11 Q And was the same story you have just related true
12 as to those months in 1962?

13 A Yes, sir, it was.

14 Q Now, would you pick up the next government exhibit
15 and tell us what exhibit it is. I think exhibit number is on
16 the back, Mrs. Meyers.

17 A Yes, sir.

18 Q That is Exhibit 56?

19 A Exhibit No. 56.

20 Q Would you tell us what that is?

21 A A call that was placed from Nashville, Tennessee,
22 from a coin telephone with prefix of 256.

23 Q Prefix, you mean, that is the first three numbers,
24 or letters and one number?

25 A First three letters or numbers of the telephone.

1 Q Like Cypress 1?

2 A Right.

3 Q Okay.

4 A The call went to Huntington, West Virginia. The
5 date of the call was November 27, 1962. The telephone number
6 in Nashville, Tennessee -- Huntington, West Virginia, sorry.
7 Was 525-8125. It is person to person. To a Nicholas Tweel.
8 It was placed at night. It was billed to a credit card.

9 Q Excuse me, what time was it placed?

10 A At 8:10 p.m.

11 Q 8:10 p.m. on the evening of November 27th, look
12 at that calendar, that looks to be a Tuesday, is that correct?
13 November 27th, 1962, which is a Tuesday, at 8:10 p.m., is
14 that correct?

15 A Correct.

16 Q Is that right?

17 A Yes.

18 Q Now, what was the duration of that call?

19 A Length of conversation was eleven minutes and
20 forty seconds.

21 Q Eleven minutes and 40 seconds?

22 A Yes, sir.

23 Q Now, by the way, what credit card was that?

24 A It was billed to the credit card number of
25 943-00-24-A-K-85.

1 Q And that is the credit card you have identified
2 as being the only credit card or the credit card --

3 MR. SILETS: (Interposing) Objection, your Honor,
4 the woman has already testified as to what the card was.

5 BY MR. NEAL:

6 Q That was the credit card you identified as being
7 held by Mr. Allen Dorfman?

8 MR. SILETS: Your Honor, I have an objection.

9 THE COURT: Overruled.

10 THE WITNESS: Correct.

11 BY MR. NEAL:

12 Q He is the only one authorized to use that credit
13 card?

14 A Yes, sir.

15 Q Anything else you want to say about that card?

16 A No.

17 Q Pardon me?

18 A The charge, unless the charge. The charge was
19 \$2.90.

20 Q Eleven minutes and so?

21 A Yes, sir.

22 Q Eleven minutes and so many seconds?

23 A Eleven minutes and forty seconds.

24 Q The next exhibit.

25 BY THE COURT:

1 Q You said it was a person-to-person call?

2 A Yes.

3 Q From what, does it show from what person to what
4 person?

5 A It only shows to, sir, your Honor. We do not ask.
6 The person that was called was Nicholas Tweel.

7 BY MR. NEAL:

8 Q And it shows charged to credit card, the only
9 authorized user of which is Allen Dorfman. Is that correct?

10 A Yes, sir.

11 MR. SILETS: Your Honor, again I object.

12 THE COURT: Yes, sir, he has been over that.

13 BY MR. NEAL:

14 Q That was November 27th at 8:10 p.m.?

15 A That is right.

16 Q All right. Now, would you go to the next
17 exhibit and give us the number?

18 A The next exhibit number is No. 57. It is the
19 call that was from Nashville, Tennessee, from a coin telephone
20 with the prefix of 256. It went to Huntington, West Virginia,
21 on November 27, 1962. Telephone number in Huntington was
22 525-8125.

23 Q Same number as before, in Huntington?

24 A Well --

25 Q (Interposing) Is that person to person?

1 A And it was person to person to a Mr. Nick Tweel.

2 Q Huntington, West Virginia?

3 A Yes, and billed to a credit card No. 943-00-24-

4 A-K-85.

5 Q That again is the credit card the only authorized
6 user of which is Allen M. Dorfman?

7 A Correct.

8 Q What is the time of that call?

9 A The time was 7:57 p.m. The length of conversation
10 was one minute and twenty-two seconds.

11 Q Now, what is the difference in time between that
12 call and the prior call?

13 MR. SILETS: Objection, your Honor. The record
14 speaks for itself.

15 THE COURT: Overruled.

16 THE WITNESS: This one was at 7:57. Exhibit No.
17 57.

18 Exhibit No. 56 was at 8 -- I have to count,
19 8:10 p.m.

20 BY MR. NEAL:

21 Q Fourteen minutes? Thirteen minutes?

22 A Thirteen.

23 Q Thirteen minutes apart. And the duration of that
24 call was minute and some seconds, and the duration of the
25 other one was eleven minutes and something?

1 A Yes. No. 57 was one minute and twenty-two
2 seconds.

3 Q Now, just for information purposes, when do you
4 start timing on a person-to-person call?

5 A When both parties begin to speak, when they say
6 the first word.

7 Q In other words, if somebody else answers the
8 phone but it is not the person to whom the calling party
9 wishes to speak, the time doesn't start until the receiving
10 party gets on the line?

11 A Correct.

12 Q Now, would you go to the next government exhibit
13 please and tell us the exhibit number and the information?

28 End
29 fls

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1 A The Exhibit No. 58, call was from Nashville,
2 Tennessee, to Huntington, West Virginia. The date, November
3 the 29th, 1962. The number called was 523-1050, it was person
4 to person to Mr. Tweel. The call came from Nashville from
5 the Telephone No. 255-2121.

6 Q That's the Andrew--I beg your pardon.

7 A It was from Dorfman in Room 746.

8 Q Now, does that say whether it's a hotel or not?

9 A No, sir, it does not.

10 Q Is that charged to a credit card?

11 A It was billed to a Credit Card 943-00-24-A-K-85.

12 Q Again is that the credit card, the only authorized
13 user of which is Dorfman?

14 A Correct. This call, it was person to person to
15 Mr. Tweel but when the call was evidently placed earlier and
16 Mr. Tweel was not in so there was word left by Mr. Dorfman
17 to have him call and he was to call a certain operator's
18 number, not a certain operator but it's a code operator call
19 and when he was ready to talk on the call he called back and
20 he said that he was, Mr. Tweel was ready to talk.

21 We rang for Mr. Dorfman. They did not expect
22 him in Room 746. This was at 8:57 A.M. so Mr. Tweel said,
23 "Try Extension 747," which the operator did. The call was
24 talked on Extension 747.

25 Q So finally Tweel and Dorfman got together according

- 1 to the records there and talked?
- 2 A Correct.
- 3 Q Would you go to the next Government--anything
- 4 else you want to say about that one?
- 5 A The time.
- 6 Q Oh, yes, the time.
- 7 A The time was 9:00 or 8:00, I am sorry, the time
- 8 was 8:58 P.M. The length of conversation was two minutes or
- 9 one minute and 40 seconds, I am sorry.
- 10 Q One minute and 40 seconds. Is that P.M., you say?
- 11 A A.M., I am sorry.
- 12 Q How about the next one?
- 13 A Can I run through this one more time, I am sorry?
- 14 Q Yes.
- 15 A The time of the call was--did I say 8:57 A.M.?
- 16 The length of conversation was one minute and 40 seconds.
- 17 Q One minute and 40 seconds. Now, would you go to
- 18 the next one, please.
- 19 A Exhibit No. 59, call from Chicago, Illinois, from
- 20 a coin telephone, the prefix of 337, the call went to New
- 21 York, New York, Telephone No. 943-2906, a person to person
- 22 to Mr. Tweel.
- 23 Q Charged on a credit--
- 24 A (Interposing) It was billed--
- 25 Q (Interposing) Excuse me, I am sorry.

1 A It was billed to a Credit Card No. 943-00-24-A-K-
2 85.
3 Q Again that is Mr. Dorfman's credit card, is that
4 correct?
5 A Correct. The time was 11:02 A.M.
6 Q And?
7 A The length of conversation was four minutes and
8 55 seconds.
9 Q What day was that? I am not sure I got that?
10 A December 4, 1962.
11 Q Would you give us the date of the previous one,
12 I am not sure I got that one, Exhibit 58, you might check
13 the exhibit.
14 A November 29, 1962.
15 Q And then there were two calls on November the
16 27th, 13 minutes apart around 8:00 P.M. from Nashville?
17 A Correct.
18 Q To Mr. Tweel. The number in Chicago 943-00-24,
19 what number, who has that number in Chicago?
20 A The company name is the Union Insurance Company
21 of Illinois.
22 Q I see.
23 A At 1221 North LaSalle.
24 MR. NEAL: You may examine her.
25 MR. SILETS: Thank you.

1

CROSS EXAMINATION

2

BY MR. SILETS:

3

Q May I have those cards, ma'am?

4

A Um-hmm.

5

Q Thank you, Mrs. Meyers. You were subpoenaed here, weren't you?

6

A Yes, sir, I was.

7

Q And do you have your subpoena with you?

8

A I have it with me but not in the courtroom, I am sorry.

9

10

Q Could someone get her subpoena for her if it's possible?

11

12

MR. NEAL: If the Court thinks it's relevant.

13

I don't see the relevancy of it but we will sure get it.

14

Does your Honor think that is relevant?

15

THE COURT: I don't understand.

16

MR. SILETS: Your Honor, I'd like to know if

17

Mrs. Meyers--I will ask you directly--have you brought any

18

other records with you or has the government subpoenaed any

19

other records belonging to the Union Insurance Agency, Union

20

Insurance Company of Illinois?

21

THE WITNESS: Yes, there were.

22

Q There were?

23

A But these are the ones I was requested to bring into the courtroom.

24

25

1 Q And do you know where those other records are?

2 A Yes, sir, they are--I do.

3 Q Where are they?

4 A In the office with my other things.

5 Q Yes, ma'am. Do those records--I assume those
6 were all subpoenaed?

7 A Yes, sir, they were.

8 Q Yes. And the government only asked you to bring
9 these records into the courtroom?

10 A Correct, because--

11 MR. NEAL: (Interposing) Your Honor, I object
12 to the inference here. We submitted to defense counsel, as
13 you know, numerous records for their keeping and inspection.
14 Now, if there is any indication--I am sure Mr. Schiffer
15 doesn't mean that we are keeping some records that they are
16 concealed, but we have--

17 MR. SILETS: (Interposing) Mr. Neal, this is
18 Mr. Silets.

19 MR. NEAL: I mean Mr. Silets.

20 MR. SILETS: There is no inference, your Honor,
21 we are only interested in getting all of the facts.

22 MR. NEAL: I am sorry.

23 BY MR. SILETS:

24 Q Mrs. Meyers, among the records that the government
25 asked you to bring were the phone bills for Mr. Dorfman's

1 personal phone as well as the phone bills for the Union
2 Insurance Company?

3 A Some of them, yes.

4 Q And they included the bills for October, November
5 and December of 1962, among other things?

6 A Yes, sir.

7 Q And perhaps even January of 1963?

8 A I would not say unless I checked.

9 Q Also these IBM cards were also subpoenaed for
10 all long distance calls placed or charged against those
11 numbers?

12 A Yes, sir.

13 Q Do you know if there were few or were there many?

14 A There are many.

15 Q Could you tell the jury approximately how many?

16 A No, I could not.

17 Q Wouldn't you say there are several thousand?

18 A For that period of time, yes. Not several
19 thousand, I just--I really can't say.

20 Q A fairly large number, is that right?

21 A (No response.)

22 Q I gather your answer is yes.

23 A No, it isn't because I don't know.

24 Q There aren't any?

25 A Well, I don't quite know what you would consider

1 large, I mean.

2 Q Were there as many as a thousand of these cards?

3 A I don't really know.

4 Q Well, were there as few as six or seven?

5 A No, sir, there weren't.

6 Q There were more?

7 A There were more than that.

8 Q Well, would you tell the jury your best information
9 as to how many there were?

10 MR. NEAL: Your Honor, we object to any guessing.

11 MR. SILETS: I am not asking her to guess.

12 MR. NEAL: Mr. Silets--

13 THE COURT: (Interposing) If she knows she may
14 say, if she doesn't she may say.

15 A I really don't know.

16 Q Did you bring them down yourself?

17 A We sent them down when they were requested by the
18 subpoena.

19 Q And they came in a rather large box?

20 A Yes, they did.

21 Q Now, did you pull these out of the files that you
22 brought down with you or did the government pull these out?

23 A I pulled them out.

24 Q And when you went through them were there any
25 other calls made against this credit card to Huntington,

1 West Virginia?

2 A I don't really know.

3 Q Well, did you search through them?

4 A No.

5 Q If the records were brought in here could you
6 tell from those records if there were any other calls to
7 Huntington, West Virginia?

8 A Yes, sir, I could.

9 Q Could you briefly do it, for example, by examining
10 bills, that would save some time for you, wouldn't it?

11 A I would prefer going through--if you want the
12 tickets would be the thing.

13 Q Well, you mean that there might be some charges
14 against the number for which there would be no card?

15 A No, sir, there would not.

16 Q For every card it would be shown on the bill?

17 A Yes, sir.

18 Q Then it would suffice for your purposes in
19 determining whether there were any more calls than these to
20 look at the bill?

21 A It could.

22 MR. SILETS: Would the government please let Mrs.
23 Meyers look at the bills for October, November and December,
24 1962?

25 MR. NEAL: Your Honor, I am informed that we

1 turned over copies of the bills to Mr. Silets. Now, I'd
2 like to point out--

3 MR. SILETS: (Interposing) Not the originals,
4 your Honor. This woman produced some original bills.

5 THE COURT: Well, do you have copies?

6 MR. NEAL: We will accept a copy of the bills.

7 MR. SILETS: I don't have them with me, your
8 Honor. I might say that there were some many of these calls
9 and the bills, there was so much--

10 THE COURT: (Interposing) Well, the government
11 has produced the ones they wished to inquire about. Now, if
12 you have some that you wish to inquire about and you have
13 the bills produce the ones you wish to inquire about.

14 MR. NEAL: I'd like to point out, your Honor,
15 that we did this voluntarily. There was no order requiring
16 us to turn those records over, we did it voluntarily and we
17 did it, we offered them as late as or as long ago as last
18 August of '63. They came in about a week or ten days ago,
19 just before the trial started, and asked for them, neverthe-
20 less, although they thought that was tardy, we got them up.

21 Now, I think that having done that certainly
22 they should be required to go ahead. We won't object because
23 they are copies.

1 MR. BRANSTETTER: May it please the Court, counsel
2 made statement, made this same statement on behalf of
3 Defendant Campbell I'm objecting to Mr. Neal's continually
4 making these statements about sometime last year in some
5 instances when I was not in the case. These statements I
6 think made in this manner are by counsel and are a little
7 bit inappropriate and I would object to them being applied in
8 any manner to the Defendant Campbell.

9 MR. SILETS: Is it the government's position they
10 will not produce the original documents? That is all--

11 THE COURT: Mr. Silets, were you not provided
12 copies of all these telephone bills?

13 MR. SILETS: Yes, sir.

14 THE COURT: All right, they are bills that you wish
15 to inquire about then?

16 MR. SILETS: Yes, sir, but she brought pursuant
17 to a subpoena down to this fine city all of her records.
18 I think I'm entitled to examine the original of those records
19 and inquire of her concerning them.

20 THE COURT: Well, the originals were made avail-
21 able for you and you made copies of all of them, did you
22 not? You made photo copies of all of them?

23 MR. SILETS: That is true, Your Honor.

24 THE COURT: Now, you have the photo copies, if
25 there are any particular bills you wish to inquire about,

1 let's get the bills and inquire about them and not take the
2 time of the court and jury in going through voluminous records
3 of which--

4 MR. SILETS: I don't want to take the Court and
5 jury's time. I just wanted to inquire because this is a
6 point in issue how many calls might have been made and I
7 would hate to have to bring this woman down from Chicago
8 again to have her re-state this proposition. But I will
9 proceed and I will ask if someone could please try to get
10 those bills for me.

11 BY MR. SILETS:

12 Q Mrs. Myers, will you look at exhibit No. 55 please?

13 A Yes, sir.

14 Q I believe you said that was a customer's toll
15 record. Is that right?

16 A Toll credit record.

17 Q Now, and who is the customer?

18 A The customer? The company.

19 Q Yes, ma'am.

20 A Is the Union Insurance Agency of Illinois. The
21 customer who is the holder of the credit card is Allen
22 M. Dorfman.

23 Q Do you, Mrs. Myers, do you know if there were
24 other credit cards issued to the Union Insurance Company
25 of Illinois?

1 A I would say yes, there are.

2 Q And I would assume then for each additional
3 credit card issued to this customer of the phone company there
4 would be an additional card such as that you have in your
5 hand?

6 A Yes.

7 Q Do you know how many such credit cards were issued
8 during the months of October, November, December, 1962?

9 A For whom?

10 Q For that customer, the Union Insurance Company of
11 Illinois.

12 A Well, a credit card isn't issued just on a
13 monthly basis.

14 Q It is issued for a period of a year?

15 A Yes.

16 Q Do you know how many such credit cards there
17 were in the year 1962?

18 A No, sir, I do not.

19 Q Now, as long as Judge Wilson inquired about some
20 of these long distance IBM cards and pertaining particularly
21 to the fact that you had stated on your direct testimony that
22 these cards were made--, indicate phone calls made person
23 to person, isn't that right?

24 A Yes, sir.

25 Q Now, you have in your hand now if I'm not mistaken

1 Exhibits 56 and 57. Is that right?

2 A Yes, I do.

3 Q Now, does that show the name of the person making
4 the call?

5 A No, sir, it does not.

6 Q Is it the custom and practice of the Bell Telephone
7 system to ask who is making such calls?

8 A No, sir, it is not. On certain types of calls,
9 it is not.

10 Q And this is one of those types?

11 A Yes, sir.

12 Q Now, I direct your attention, Mrs. Myers, to the
13 right hand side of those cards, there are some punches, are
14 there not?

15 A Yes, sir.

16 Q And in the second column from the right it is
17 entitled from. Is that right? On the top? Top of the card?
18 Shows from? I guess that indicates where the call was made
19 from? And then there are punches beneath it?

20 A That is not the second column from the right.

21 Q Second column from the right, well, let me
22 inquire, what are the first group of punches on the right
23 hand side of those two exhibits?

24 A I would like to clarify this, Your Honor.

25 Right hand side, right hand side from where? From what column?

1 Q Excuse me, I don't want to confuse you. Don't
2 the punches show that there was a call made from a number
3 with the prefix 256?

4 A But the punches don't show on the left hand side.

5 Q No. No. Not on the left hand side. But the
6 right hand side? That shows where the call was being made
7 from, does it not?

8 A Are you speaking of punches?

9 Q Yes, sir, the holes.

10 A No, sir.

11 Q Well, can you tell me from these cards then from
12 what telephone number the call was made?

13 A Not the telephone number. I said the call came
14 from the prefix of 256 and it was from a coin telephone.

15 Q Yes, that is what I was inquiring about, and that
16 is signified by little holes in the card, isn't it?

17 A No, sir, it isn't.

18 Q Would you tell me how you can tell that?

19 A It is marked by the operator in the bubble, 2, 5,
20 and 6.

21 Q I see. Yes. But there are little holes on the
22 right hand side in the spaces 2, 5 and 6.

23 A But there are holes on the left hand side. There
24 are holes all over the ticket.

25 Q Anyway, so we understand this, these calls were

1 made from a coin operated phone?

2 A Yes.

3 Q With the prefix 256?

4 A Correct.

5 Q Can you tell from these cards if it is the same
6 phone?

7 A No, sir.

8 Q Same instrument?

9 A No, sir, I couldn't.

10 Q Well, can you tell the jury if it is placed by
11 the same operator?

12 A It is not.

13 Q Two separate operators?

14 A Three.

15 Q Three separate operators?

16 A Yes, sir.

17 Q For the two calls?

18 A Which call?

19 Q Which call had two operators?

20 A Which call?

21 Q Yes, ma'am.

22 A 11-27-1962.

23 Q Which exhibit number?

24 A Exhibit No. 56.

OA 25 Q And that was the one of the longest duration?

1 Had two operators?

2 A Well--

3 Q Yes, ma'am?

4 A Go ahead.

5 Q From your experience all this wonderful service
6 with the phone company, can you tell us why there would be
7 two operators?

8 A Yes. The girl who probably took the call who
9 started the call maybe all--, it was maybe relief time, lunch
10 time or something, and she may have just wrote her number
11 down and it was time for her to go to lunch so she crosses
12 out her operating number and the next girl takes over before
13 the call proceeds any further, she puts her number down.

14 Q Well, now, were these telephone operators in
15 Illinois?

16 A No, sir, they were not. Nashville, Tennessee.

17 Q These were Nashville, Tennessee operators?

18 A That's right.

19 Q Well, is that part of the Illinois Bell system?

20 A No, sir, it is part of the A. T. & T. system
21 which the practices are the same throughout the American
22 Telephone and Telegraph system.

23 Q I understand it is a very fine company, but these
24 entries then on the cards relating to phone calls made
25 outside of Illinois, were not entries made through the

1 Illinois system or under your supervision?

2 A They weren't made from the system, but they were
3 billed in the Illinois system.

4 Q I'm talking about these particular exhibits,
5 No. 56, No. 57, No. 58, and just so that you will recall
6 what No. 58 is, let me show it to you. It is another one of
7 these little IBM cards.

8 A Yes.

9 Q Now, all three of those, the entries made on the
10 card were made by people in Tennessee, not in Illinois?

11 A That's right.

12 Q And you work for the Illinois system. Is that
13 right?

14 A Yes.

15 Q But you have sufficient knowledge you say that
16 you can tell us all about this, isn't that right?

17 A Yes, sir.

18 Q Now, take a look at the No. 58. That is the call
19 of what is it, November 29?

20 A 11-29-1962, yes.

21 Q If my memory serves me right in answer to some
22 questions by Mr. Nealyou said that that was a leave word.
23 Is that right?

24 A Yes, sir.

25 Q Now, does that mean that the caller asked the

1 operator to keep trying?

2 A Not to keep trying, no. It doesn't.

3 Q What does it mean then?

4 A It means that the party who was being called,
5 Mr. Tweel, was not there at the moment. They weren't quite
6 sure when to expect him so then Mr. Dorfman requested that
7 word would be left for Mr. Tweel to call him as soon as he
8 returned.

9 Q Well, of course, you are apparently when you say
10 Mr. Dorfman and Mr. Tweel, you are just reflecting the names
11 shown on the card, isn't that right?

12 A I'm reading from the ticket exhibit.

13 Q You don't know whether there was any particular
14 individual who said this but you are just reading from the
15 ticket?

16 A I'm reading from the exhibit.

17 Q So, it is your testimony then that the operator
18 actually spoke to somebody at the other end, they said, they
19 must have said that Mr. Tweel was not there.

20 A Yes, sir.

21 Q Or is it conceivable that nobody answered the
22 phone?

23 A No. It has to be somebody that answered. They
24 left word with someone. Someone took the message.

25 Q Now, do you have any knowledge what this number is

1 or in whose name, 523-0150 in Huntington, West Virginia is
2 registered with?

3 A No, sir, I do not.

4 Q Now, No. 54, do you have No. 54 there?

5 A No, sir, I don't.

6 Q I have it. I'm sorry. Would you read the names
7 shown on that card as having placed the call? And having
8 received the call and then spell them so that the jury can
9 see what the card reflects?

10 A The call was placed to a Nick and the operator
11 has Twell (spelling) T-W-E-L-L.

12 Q So that is really Twell, not Tweel?

13 A Well, I--

14 Q And who placed the call?

15 A She has it from, (spelling) D-R-O-F-M-A-N.

End
Pk 30&A

Pk 31
Poll.

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1 Q So that is Drofman, isn't that right?

2 MR. NEAL: Could be Drofman.

3 A The operator does not -- we do not have to
4 question the spelling of a name.

5 Q Well, then --

6 A (Interposing) We write it.

7 Q It's conceivable that errors do crop into the
8 AT and T system, isn't that right?

9 A By how?

10 Q Well.

11 A By spelling, yes.

12 Q Well, or wrong names or so on, isn't that right?

13 A I wouldn't say wrong names, probably spelling.

14 Q Spelling.

15 A If you had a request for a Spanish-speaking person,
16 it would be difficult.

17 Q Mrs. Myers, do you know in whose name 943-0024
18 in Chicago is listed?

19 A The name of the company?

20 Q What is that name again, Union Insurance?

21 A Union Insurance Agency of Illinois.

22 Q And the bills would be rendered to Union Insurance
23 Company of Illinois?

24 A Yes, sir, Union Insurance Agency.

25 MR. SILETS: Well, would the reporter mark this

1 for me, please? I will get you to mark these.

2 (The telephone bills referred to above were marked
3 Defendant Dorfman's Exhibits Nos. 60, 61, and 62,
Witness Mrs. Myers, for identification only.)

4 BY MR. SILETS:

5 Q Mrs. Myers, I show you what has been marked
6 as Defendant Dorfman's Exhibit No. 60 and would you look at
7 it and tell the jury what essentially it is to the best of
8 your knowledge? It's a group of documents. Will you look at
9 them all?

10 Now, that appears, does it not, to be the bills
11 sent by the Illinois Bell Telephone Company to the holder of
12 943-0024?

13 A Correct.

14 Q For which months, ma'am?

15 A October 28th, 1962.

16 Q That is the billing date?

17 A Uh-hmm.

18 Q Who is it billed to?

19 A The name of the biller it's mailed to is Rose
20 Dorfman and Allen Dorfman, 41 -- 1221 North LaSalle, Chicago
21 10, Illinois.

22 Q Now, I show you Exhibits 61 and 62, respectively,
23 and ask you to look at them. Indicate if they also are bills
24 sent for the months of November and December of 1962,
25 respectively, to the holder of 943-0024, is that right?

1 A Yes, they are.

2 Q And the names of the persons to whom that number
3 has been billed is Allen and Rose Dorfman, right?

4 A (Witness moves head up and down.)

5 Q That's the same address as the Union Insurance
6 Company of Illinois, 1221 North LaSalle, Chicago?

7 A Yes, sir. It is.

8 Q I may have misunderstood you, ma'am. I thought
9 that you said that the bills would have been sent to Union
10 Insurance Company of Illinois?

11 A The bill name is one thing, the company is
12 another. It's listed for the company of the Union Insurance
13 Company as far as we are concerned, Insurance Agency, billing
14 would be different and I am sorry.

15 Q I am sorry.

16 A I knew it was. This top one does not pertain to
17 this particular number either.

18 Q The top one. May I see it?

19 A Uh-hmm. That sheet right there (indicating).

20 Q It does not pertain to Rose Dorfman and Allen
21 Dorfman at 1221 North LaSalle?

22 A It pertains to them but not to the telephone in
23 question, not 943-0024.

24 Q But it has their name on it?

25 A Yes, but it's on a semi-public phone.

1 MR. SILETS: I think I would like the government
2 to look at it. Do you want me to hold the questioning up
3 while you look at that?

4 MR. NEAL: No, go ahead.

5 MR. SILETS: Thank you.

6 BY MR. SILETS:

7 Q Mrs. Myers, since we are having a little bit of
8 a problem in getting the phone company's copies of the bills,
9 is it not true that these bills should be identical or almost
10 identical to the ones that the phone company has and keeps
11 in its own records?

12 A It is identical.

13 Q So if you examine these bills belonging to the
14 holder of 943-0024 it should reflect all of the calls that
15 were made and charged for the months of October, November,
16 and December of 1962?

17 A Uh-hmm, correct.

18 Q When the government is through I would like for
19 you to look at them, if you don't mind, it will be just a
20 minute.

21 May I proceed?

22 MR. NEAL: Yes.

23 BY MR. SILETS:

24 Q Now, Mrs. Myers, would you be good enough to
25 go through Defendant Dorfman's Exhibits 60, 61, and 62, these

1 bills for the months of October, November, and December of
2 '62, and call out to the jury each long-distance call made
3 and charged against it to Huntington, West Virginia?

4 MR. NEAL: Your Honor, I fail to see the relevance
5 of this. I object on that basis. We have offered certain
6 calls, if they want to show there is some more calls between
7 Dorfman and Tweel I suppose the only harm is time consuming.

8 MR. SILETS: Your Honor --

9 THE COURT: (Interposing) Overruled.

10 MR. SILETS: Thank you.

11 BY MR. SILETS:

12 Q When you reach one to Huntington would you call
13 it out, please?

End Tk 31
32 fls

14

15

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1 MR. NEAL: Your Honor, I don't believe--I beg
2 your pardon.

3 BY MR. SILETS:

4 Q Did you reach one?

5 A I have a question. Did you say to Huntington?

6 Q Yes, ma'am.

7 MR. NEAL: Your Honor, I don't think while she
8 is looking, I don't think this is proper cross-examination.
9 If Mr. Silets is trying to total all the calls to Huntington,
10 just by this, he can't do this because this lady has just
11 testified a call from Dorfman to Tweel on October 21, which
12 was from Dorfman's home number.

13 MR. SILETS: Well, we are getting to that, Mr.
14 Neal. Just bide your time.

15 MR. NEAL: Well, is this proper cross-examination?

16 THE COURT: I'm unable to determine now.

17 MR. SILETS: We can save a lot of time if the
18 government will agree that the tickets that they have put in
19 evidence are the only calls that were made to Huntington,
20 your Honor. That is what I am trying to establish. We could
21 save a lot of time.

22 MR. HOOKER: I don't know.

23 MR. REDDY: Your Honor, I might say just that
24 this witness might examine these overnight. Save the Court's
25 time and the jury's time and come in here--

1 are appearing to be the bills charged to Allen M. Dorfman,
2 1001 Hoffman Lane, Riverwood, Dearfield, Illinois, Phone
3 No. 945-5980, for the months of October, November and December,
4 1962, respectively. Now, those are rather short and it won't
5 take you very much time, just tell the jury if you find any
6 calls to Huntington charged to those for his home number.

7 (The Defendant Dorfman records referred to above
8 were marked Defendant Dorfman Exhibits No. 63,
9 64 and 65 respectively, Witness Myers, for
identification only.)

10 A On 10-21, there was a call to Huntington, West
11 Virginia. Area Code 304.

12 Q Yes, ma'am.

13 A The amount was \$1.55.

14 Q And that is Government Exhibit No. 54, is it?

15 A Right.

16 Q Have you looked at them?

17 A Yes.

18 Q Well, then, would I be correct in saying the
19 only calls for that period of time that were charged to
20 either one of those numbers are these four represented by
21 Government Exhibits 54, 58, 57 and 56, the ones that you
22 looked at?

23 A Before I say yes, let me make sure. Right.

24 Q Just four calls to Huntington, West Virginia,
25 and those are the ones that the government has already put

1 into evidence. Right?

2 A Correct.

3 Q Now, just a few more questions, Mrs. Myers, and
4 we will let you go back to Chicago. Isn't it true that when
5 you make a credit card call from a public telephone there is
6 nothing concealing the making of the call by that fact alone,
7 is there?

8 A (Witness nods head up and down.)

9 Q There is not?

10 A No. I'm sorry.

11 Q What difference is there if there is a difference,
12 between making a credit card call from a public telephone
13 or making it from a private telephone when you use a credit
14 card, is there any difference?

15 A There isn't any difference.

16 Q One last question.

17 A Yes.

18 Q When you make a call from a coin box, do you
19 always give the number of the coin telephone to the operator
20 when you are placing a long distance call?

21 A This again differs for types of calls. The
22 practice calls for a different routine.

23 Q Well, what if you use a credit card?

24 A It is not necessary to have the telephone number.

25 Q And if you use, drop coins that makes all those

1 little noises, then you have to tell the number?

2 A Correct. You do, and other things, too. Other
3 types of calls, too.

4 MR. SILETS: Thank you very much.

5 THE WITNESS: You are welcome.

6 THE COURT: All right, other cross-examination?

7 MR. BRANSTETTER: May it please the Court, in
8 accordance with our previous standing objections on behalf
9 of the Defendant Campbell we object to any of this testimony
10 being given at all or the jury considering any of it and we
11 request the Court to instruct them at this time that it is
12 not to be considered.

13 THE COURT: Overrule the objection. It will be
14 permitted under the same instructions as heretofore given.

End Tk 3215
Tk 33 fls.

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REDIRECT EXAMINATION

1
2 BY MR. NEAL:

3 Q Just two or three questions, Mrs. Myers. They
4 haven't been offered in evidence but at least you talked about
5 certain defense exhibits, Dorfman's 60 through 63, I believe.
6 I understand they cover only the billing for two particular
7 numbers, is that right?

8 A Correct.

9 Q And only for the months of October and November --
10 excuse me, October and November?

11 A And December.

12 Q And December. Is there a December bill in there?

13 A I thought I looked at a December bill.

14 MR. SILETS: Yes.

15 Q Then that would cover, would it cover the
16 December calls or would that be the November calls if it's
17 a December bill?

18 A It would cover calls from November 28th, 1962,
19 to December 27th, 1962, provided we had received them and if
20 they were tickets that were to be billed that were placed
21 from other companies to be billed in our company, providing
22 we received them, sometimes they come up later.

23 Q I see. This does not mean at all that there
24 might not be more calls between Dorfman and Tweel other than
25 the ones we have if they were not charged to these two numbers?

1 A Correct.

2 Q That is correct. Now, also I want to show you
3 Dorfman's Exhibit No. 60 and ask you if there are not a
4 number of calls from Huntington, West Virginia, to various
5 places, looks like around Chicago, during --

6 MR. SILETS: (Interposing) Calls from where,
7 Mr. Neal?

8 MR. NEAL: From Huntington, West Virginia.

9 A There are calls from Huntington, West Virginia.

10 Q Would you read off there the dates and the calls?

11 A Uh-hmm. Do you want me to go through them all?

12 Q Yes. Go through them all, the calls from
13 Huntington right there.

14 MR. SILETS: Maybe I am not understanding this
15 correctly. These are calls made from Huntington to Chicago?

16 THE WITNESS: To different points, yes.

17 Q (By Mr. Neal) And charged to the Dorfman number
18 or the number that Mr. Silets used?

19 A I verified that is why I said "to Huntington,"
20 I understood you to say yes.

21 MR. SILETS: Yes, calls, I had asked you about
22 calls to Huntington.

23 THE WITNESS: To.

24 MR. SILETS: Now he is asking about calls made
25 from Huntington.

1 THE WITNESS: From Huntington.

2 BY MR. NEAL:

3 Q In other words, if somebody was calling from
4 Huntington and charging to Dorfman's number, is that correct?

5 A That is correct.

6 Q All right. Now, read us those calls.

7 A On October 12th, 1962, there was a call from
8 Huntington, West Virginia, to Chicago, Illinois.

9 Q Charged to Dorfman's?

10 A The telephone number of 943-0024.

11 Q All right.

12 A Again on October 12th, 1962, there is a call from
13 Huntington, West Virginia, to Skokie, Illinois.

14 On October 12th, 1962, a call from Huntington,
15 West Virginia, to Glenview, Illinois.

16 Again on 10 -- October 12th, 1962, a call from
17 Huntington, West Virginia, to Glenview, Illinois.

18 On 10-12-62, a call from Huntington, West Virginia
19 to Louisville, Kentucky.

20 Q Those are all charged to --

21 A (Interposing) 943-0024.

22 Q Now, Mr. Silets asked you about if the Union
23 Insurance Agency didn't have other credit cards, is that
24 correct?

25 A Yes, he did.

1 Q Those other credit cards have different prefixes
2 or different numbers, is that true?

3 A Different letter, they have the same number,
4 it would be billed to the same company but it would have a
5 different letter.

6 Q The card he asked you about shows a particular
7 number and the only authorized user is Allen Dorfman?

8 A Correct.

9 MR. NEAL: No further questions from the govern-
10 ment.

End Tk 33
33A fls

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Tk[^]

33A

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Myers - Recross

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RECROSS EXAMINATION

BY MR. SILETS:

Q I have just a couple, Mrs. Myers. You said those calls from Huntington were made on October 12th?

A Yes, sir.

Q That is Columbus Day, October 12th? I just wanted to fix the date very definitely that it was the 12th of October, 1962?

A (Witness moves head up and down.)

Q Now, you very carefully said that only according to the records of the phone company only Mr. Dorfman was authorized to use that credit card number.

A That's right.

Q Now, if somebody else knew that number would the operator try to make sure that the person who was using the credit card was really the holder of it or would she just take the number as the person said it?

A She would take the number but if there was any doubt in the customer's mind they wouldn't pay the bill.

Q I understand. So then if Mr. Dorfman had authorized some of his 75 employees to use his credit card number the phone company wouldn't know the difference who used it, isn't that right?

A That is correct.

Q And if he paid the bill, because either he didn't

1 check the bill or because it was somebody he said he could use
2 the number or somebody knew of his number, or the phone
3 company wouldn't know and you wouldn't know, would you?

4 A No, sir, we wouldn't.

5 Q And the jury wouldn't know from these records,
6 would they?

7 A No, no.

8 MR. SILETS: That's all.

9 REDIRECT EXAMINATION

10 BY MR. NEAL:

11 Q Do you know any employees of Dorfman who were in
12 Nashville during the Hoffa trial?

13 A No, sir, I don't.

14 RECROSS EXAMINATION

15 BY MR. SILETS:

16 Q My questions, of course, also apply to any un-
17 authorized person. You are very careful to talk about the
18 authorized person but say that I overheard Mr. Dorfman use
19 a number at one time, his credit card number, and I used
20 that, the phone company wouldn't know that it wasn't Mr.
21 Dorfman who used it, would they?

22 A Not if he paid his bills, if he didn't you would
23 be guilty of fraud.

24 MR. SILETS: I see. Thank you.

25 MR. NEAL: That's all we have.

1 MR. SILETS: Could I have my exhibits back?

2 REDIRECT EXAMINATION

3 BY MR. NEAL:

4 Q I assume Mr. Dorfman's bills were paid.

5 A Yes.

6 MR. SILETS: Thank you very much.

7 THE COURT: Thank you, ma'am. May this witness
8 be excused?

9 MR. NEAL: May this lady be excused?

10 MR. BRANSTETTER: May it please the Court, as
11 far as I know this lady has not testified to anything relating
12 to the Defendant Campbell. If it becomes material in any
13 way down the line I would expect her to be produced.

14 MR. NEAL: I mean there is no reason she can't go
15 back to her home at least until recalled.

16 THE COURT: She may be excused.

17 MR. SILETS: Have a good trip.

18 (Witness excused.)

19 THE COURT: All right. Would it serve any purpose
20 to start on another?

21 MR. HOOKER: The next witness will be Miss Fulton,
22 Your Honor, will take some time.

23 THE COURT: Well, all right. Some other matters
24 you wish to take up. Excuse me, Mr. Dale, did you have a
25 matter?

1 The exhibits that were filed, Mr. Silets, if you
2 will, please, turn those in to the clerk.

3 MR. SILETS: I didn't offer them in evidence yet,
4 they were marked only for identification.

5 THE COURT: Well, they are in the record for
6 identification purposes, they would have to stay in the
7 record.

8 MR. NEAL: Mrs. Fulton is the lady, you recall,
9 that was on the stand. Mr. Hooker says he couldn't finish
10 with her. We have a legal problem.

11 MR. HOOKER: I don't have any objection to recalling
12 her, I think we could scarcely get her introduced.

13 THE COURT: No use starting on something we can't
14 complete in a reasonable time.

15 MR. HOOKER: We couldn't possibly complete her.

16 MR. SILETS: Your Honor, I think the Court should
17 admonish Miss Fulton not to discuss her testimony but might
18 I suggest that she be called for that sole purpose?

19 THE COURT: All right. Ladies and gentlemen, we
20 will excuse the jury then at this time, there being other
21 matters to take up, and observe the same instructions about
22 not discussing the case or talking with anyone and come back
23 at nine o'clock in the morning.

24 (Thereupon, the jury of 12 and four alternates
25 were excluded from the courtroom and in their absence the

1 following proceedings were had, to-wit:)

2 THE COURT: All right, Mr. Neal.

3 MR. NEAL: May it please the Court, at this time
4 there certainly should be no question but what we can
5 introduce Mrs. Hazel Fulton to testify with respect to the
6 full conversations on the telephone the night in question
7 when she called a man who identified himself as Allen
8 Dorfman, a bad connection or something, and called back later
9 or a few minutes later and identified himself again as Allen
10 Dorfman. She handed the phone to Mr. Tweel. Tweel talked
11 to him a few moments and then said, "Get on the line, he has
12 got something to give you."

13 Now, Your Honor, we have gone at this every way,
14 I mean it's just the possibility of it not being Dorfman on
15 the line now becomes something to dwell upon infinitely and
16 I have cases precisely in point with this additional testimony.

17 THE COURT: All right.

18 MR. NEAL: Andrews versus United States, 274,
19 strike that, 78, Andrews Versus United States, 78 F 2d 274
20 and particularly at Page 273, Tenth Circuit, 1935.

2nd Tk
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Tk 34
fol.

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1 I would like the Court to also see--I gave the
2 Court the Bucur case. Carbo vs. United States, 314 F. 2d
3 718. The Ninth Circuit, 1963. And particularly, your Honor,
4 at Page 743.

5 THE COURT: All right.

6 MR. NEAL: United States vs. Bucur, I point out
7 the pages there, I have given you that before. Page 303 and
8 304.

9 THE COURT: What is the citation?

10 MR. NEAL: It is the previous case. I thought
11 your Honor had it. 194 F. 2d 297, particularly at Page 303.

12 Particularly, your Honor, this Sixth Circuit case,
13 United States vs. Johnson, 318 F. 2d 288, 1963. Sixth Circuit
14 by the Honorable Judge Weick and O'Sullivan and Senior Judge
15 of this District, Judge Darr.

16 THE COURT: All right.

17 MR. NEAL: And I point particularly at Page 291
18 where the Court says it is true that the person or persons
19 talking to appellant did not recognize his voice but by
20 credible circumstantial evidence this appellant is shown to
21 be one of the persons making or receiving the call.

22 Your Honor, as I said, we have tied it up on both
23 ends now, telephone companies, the person making these calls,
24 Nashville, Dorfman, charged credit call on which he was
25 authorized to use, calls with short duration. Just wrapped

1 up from every end, your Honor. And we wish to call Miss
2 Fulton the first thing in the morning.

3 MR. SILETS: Your Honor, unfortunately the
4 government is trying to build an inference on an inference.
5 It is all they have if they have established it is that a
6 call was charged against a particular number, particular
7 credit card was used, it could have been used by a million
8 different people. The operator, this lovely lady who was
9 just on the stand admitted that the phone company record
10 itself could in nowise assure the Court or the jury that it
11 was a call made by Mr. Dorfman. Nor could she even assure
12 the Court or the jury that it was this individual, Mr.
13 Dorfman, who used the credit card.

End Tk 34 14
Tk 34A fls.

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1 We have the government coming now before the
2 Court and saying we have enough outside circumstantial proof
3 to establish that this was in effect Allen Dorfman, this
4 person sitting in the courtroom, who talked to Miss Fulton
5 on the phone solely because a phone call was charged and a
6 credit number was used.

7 Now, again, one of the most recent cases which
8 seems to be so pertinent and so much in point is this United
9 States versus Laughlin where it was said these records prove
10 only one thing, if they prove anything at all, and that is
11 telephone calls were made between certain phone numbers.
12 To argue from a phone company record showing a call between
13 certain phone numbers, that the persons in whose names those
14 phones are listed made the call is destructive of a very
15 important rule of evidence, namely, that the person making
16 the entry in this case the telephone operator should be making
17 the entry based upon personal knowledge. This principle has
18 often been invoked in excluding entries made by persons who
19 had no supposed knowledge that the recorded facts were
20 recorded. It hardly need be pointed out that the same rule
21 applies with equal force to a person to person call as there
22 the operator has no personal knowledge of the real parties
23 making the call but only records the names given to her.

24 These cases that Mr. Neal has been so kind to
25 call to the Court's attention if taken circumstances where

1 there are some effort of reliability, some factor, upon which
2 the Court in good conscience can conclude that it may go to
3 the jury for determination, but here we don't have that. We
4 have an inference and we want to take that inference and let
5 the government pull itself up by its own bootstraps to establish
6 that it was Allen Dorfman, the person sitting in the court-
7 room, who made the call.

8 I can't conceive of that being enough. There are
9 any number of things that they could do to prove it. To bring
10 in enough circumstances. But this is not enough and it cannot
11 be enough to allow this woman to so testify.

34B
12 MR. NEAL: May I just point out, Your Honor,
13 before we leave that the Laughlin case defense counsel cited
14 is a case involving perjury. The Laughlin case defense
15 counsel cited is a case involving perjury and they talk there
16 about the requirements that there must be direct and positive
17 evidence of falsity of defendant's sworn statement relied
18 upon by the prosecution. And any circumstantial thereof is
19 insufficient no matter how persuasive.

20 This is a case that is entirely sui generis. We
21 have here Dorfman making a telephone call from one number to
22 a telephone call to another number.

23 We have a series of telephone calls person to
24 person between Dorfman and Tweel. We have two telephone
25 calls in the period of time late November, one following

1 within a few minutes of another one from Nashville to
2 Nicholas J. Tweel in person charged to the credit card of
3 Allen M. Dorfman who was the only authorized user of that
4 credit card to Huntington, West Virginia.

5 We have another person on the other end of the
6 line saying that she received these two calls in short
7 succession in late November, or early December. How can there
8 be closer testimony than that?

9 That on the first call the man identified himself
10 as Dorfman. That the connection was bad. He hung up and
11 called again a few moments later. He identified himself as
12 Dorfman. It was turned over to Tweel. Tweel talked to him
13 a few minutes. It was turned back, Your Honor, back to this
14 lady and Tweel says, "Take down what this man has to say."
15 Or take down what he has, get on the line and take down what
16 he says, in that way making, of course, again this lady an
17 agent of the Defendant Tweel.

End
all 34.

Tk 35
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1 Your Honor, under the cases we have cited there
2 can be no question about the total admissibility of this matter
3 now.

4 MR. HOOKER: We can show that the date of that
5 was actually November 27th, which these tickets show was the
6 night on which two of these calls took place. It appears in
7 the statement that she made at the time that that is when
8 those two calls, the one where the bad connection was and
9 the one where the names were given was November 27th, 1962,
10 identified by the exact date of this ticket.

11 MR. SILETS: Just one very short comment.

12 THE COURT: Yes, sir.

13 MR. SILETS: Apparently Mr. Neal and Mr. Hooker
14 are relying on the fact that we must infer and imply that
15 because the call was made and charged against a credit card,
16 a particular name, that it must have been Mr. Dorfman and
17 this lends credibility to the otherwise excludable testimony
18 of Mrs. Fulton.

19 I would like to offer to prove that the call
20 which Mr. Neal so carefully elicited from this witness as
21 having been made in Huntington, West Virginia, to Louisville
22 and charged against this credit card was not even made by
23 this man, Mr. Dorfman. This would lend a lie to the inference
24 that because it was charged to a particular card that it was
25 in fact the individual sitting here in the courtroom who made

1 it. I would like to have the opportunity to place the
2 witness on the stand and testify that he made the call,
3 charged it to that card from Huntington, West Virginia, and
4 this would establish, or at least destroy the inference, that
5 the government is attempting to urge upon the Court that
6 because of the fact of the charge to the credit card it had to
7 be this man.

8 MR. NEAL: Will this witness testify that he
9 gave the name Dorfman?

10 MR. SILETS: I don't know, Mr. Neal. I'm just
11 telling you that I know that one of those calls were charged
12 to this number on this credit card and you read it off to
13 this witness.

14 MR. NEAL: Anyway --

15 MR. SILETS: (Interposing) He will so testify.

16 MR. NEAL: Those numbers are by your own testimony
17 of the witness you took over, were not charged to the credit
18 card, they were charged to a number.

19 THE COURT: All right. Anything further this
20 evening, gentlemen, before we adjourn?

21 MR. BROWN: I would like to bring one matter
22 before the Court, if I may address the Court from this
23 position.

24 THE COURT: All right.

25 MR. BROWN: I think the Court should take

1 cognizance of. I know the seating arrangement was, of course,
2 rather poor to start with, but when we all started it was
3 agreed that the government would move on this side. Now,
4 since Mr. Durkin has gotten into it, I am not objecting to
5 Mr. Neal, to you particularly sitting there, but since Mr.
6 Durkin has gotten in the case and seemed to be leading
7 counsel this afternoon, he has detracted completely three
8 jurors by his conversation across the table with Mr. Neal
9 in such a voice, in a voice so loud that the jurors are
10 constantly watching the two and never watching the witness,
11 and we object to this procedure because, of course, Mr. Durkin,
12 which I assume by the grins and the laughs that he was making,
13 was taking issue with the evidence being presented by the
14 defendants, or making some comment on it, and it was loud
15 enough and audible enough that the jurors constantly were
16 listening to what was going on at counsel table and not
17 listening to the witness, and we feel that the table should
18 either be moved back or else Mr. Durkin should be instructed
19 if he has conversations with Mr. Neal to go around to Mr.
20 Neal out of the earshot of the jurors.

21 Now, this situation has continued all afternoon.

22 THE COURT: Well, it hasn't been quite all after-
23 noon, because Mr. Silets was sitting on that side part of the
24 afternoon.

25 MR. SILETS: Yes, your Honor, but I didn't carry

1 on any conversation.

2 MR. HOOKER: I was sitting right in front and I
3 didn't hear it.

4 THE COURT: Well, let's stay on this side of the
5 table, gentlemen.

6 If there's nothing further, if we have no more
7 difficult problems to resolve, court will adjourn.

8 (Thereupon, at 4:37 o'clock, p.m., court was
9 adjourned until 9:00 a.m., January 31, 1964.)

End 35

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REPORTER'S CERTIFICATE

I, Fred B. Downing, Official Court Reporter for the United States District Court, for the Eastern District of Tennessee, Southern Division, at Chattanooga, Tennessee hereby certify that Richard Smith and John E. Hamlin, court reporters, in accordance with stipulation of counsel for the parties filed in this case, recorded by machine shorthand the proceedings had in open court in the above styled case on January 30, 1964; and that said proceedings were reduced to typewriting under my supervision; and that the foregoing transcript is a true and correct transcript of the said proceedings to the best of my knowledge.

This the 30th day of January, 1964.


Official Court Reporter

JAMES R Hoffa

IN THE DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF TENNESSEE

SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff.

vs.

NO. 11,898

JAMES R. HOFFA, ET AL,

Defendants.

Date: January 29, 1964

Chattanooga, Tennessee

Before: Honorable Frank W.
Wilson, Judge

OFFICIAL TRANSCRIPT OF PROCEEDINGS

VOLUME IX

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I N D E X

TRIAL EXHIBITS

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>For Ident.</u>	<u>In Evidence</u>
5, Deft. Campbell	Letter from Mattie Mix to Mr. Neal		1917
6-11, Govt.	Records of Southern Bell Telephone Co. (Nashville)	1951	1958
12-15, Govt.	Guest Register Cards of Brown's Guest House	1985	1977
16, Govt.	Photograph	1989	1991
17, Govt.	Photograph	1989	
18, Govt.	Photograph	1989	2001
19, Govt.	Telephone Bill	2003	2003
20-22, Govt.	Records of Southern Bell Telephone Co. (Louisville)	2013	2015
23-28, Govt.	Records of Southern Bell Telephone Co. (Louisville)	2021	2021
29-34, Govt.	Records of Southern Bell Telephone Co. (Louisville)	2027	2029
35-36, Govt.	Records of Southern Bell Telephone Co. (Louisville)	2034	
37-38, Govt.	Records of Southern Bell Telephone Co. (Louisville)	2037	2039
39-40, Govt.	Records of Southern Bell Telephone Co. (Louisville)	2042	2042
41, Govt.	Record of Long Distance Calls	2071	
42-45, Govt.	Records of Michigan Bell Telephone Co. (Detroit)	2089	

EIGHTH DAY OF TRIAL

9:00 O'Clock A. M.
January 29, 1964

(Thereupon, pursuant to adjournment from
January 28, 1964, court was in session and the jury of 12
and four alternates remained excluded from the courtroom and
the following proceedings were had.)

THE COURT: May I file with the court reporter
the questionnaires upon all jurors. This is Exhibit No. 14,
as I recall to the voir dire examination of the jurors. These
questionnaires, the first 16, are the members of the jury
who were selected and the alternates and the remaining
questionnaires are in numerical order.

With reference to the present state of the record
the Court understands that the defendants have requested all
documents to which they would be entitled under the Jencks
act upon the witnesses James T. Walker and Carl Fields,
including any notes that may have been taken.

The Court has ordered and instructed the govern-
ment to produce all documents, deliver to the defendants all
documents upon these two witnesses which would be subject to
production under the Jencks act.

The Court understands that the government has
responded by saying that they have so delivered all documents
that would be subject to production under the Jencks act and

1 the Court proposes at this time to inquire of Mr. Sheets and
2 Mr. Sheridan in this respect.

3 Does the Court understand the record correctly in
4 that respect? If so, may we have Mr. Sheets? Is Mr. Sheets
5 present, can he be produced? All right.

6 MR. DALE: Raise your right hand, please. Do you
7 solemnly swear that the evidence that you will give in this
8 case shall be the truth, the whole truth, and nothing but the
9 truth, so help you God?

10 MR. SHEETS: I do.

11 MR. DALE: Have a seat, sir.

12 WILLIAM L. SHEETS,

13 a witness called at the instance of the Court, being first
14 duly sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY THE COURT:

17 Q Would you state your name, please, sir?

18 A William L. Sheets. (Spelling) S-H-E-E-T-S.

19 Q Mr. Sheets, what is your occupation?

20 A Special agent, FBI.

21 Q And how long have you served with the FBI?

22 A More than 23 years.

23 Q Where is your station?

24 A Nashville, Tennessee.

25 Q In connection with your duties as an agent of the

• Sheets - Direct

1 Federal Bureau of Investigation, have you made any
2 investigations pertaining to matters in the lawsuit of the
3 United States versus James R. Hoffa, et al, the case that is
4 upon trial in this court at this time?

5 A Yes, sir.

End
Tk 1

Tk 2
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1 A Yes, sir.

2 Q Specifically, Mr. Sheets, in the performance of
3 your duties, did you interview a witness by the name of
4 James T. Walker of Nashville, Tennessee?

5 A Yes, sir.

6 Q Do you recall the date or dates or places of
7 such interviews?

8 A I believe it was about April 1st, if your Honor
9 please.

10 Q Do you recall whether you interviewed him upon
11 one or more than one occasion?

12 A On two occasions. On two successive days.

13 Q With regard to those interviews did you have or
14 use any method to record the statements of Mr. Walker and,
15 if so, just to what extent did you record or make a record
16 of that or either of those interviews?

17 A As I recall I took a signed statement from Mr.
18 Walker on the second interview.

19 Q On the first interview did you make any record
20 of that interview?

21 A I may have made a few notes. I do not recall
22 exactly. It was a date interview, the first one.

23 THE COURT: May I have the copy of the statement
24 that was delivered unto defense counsel with regard to Mr.
25 James T. Walker?

1 Q (By the Court) On the first interview if you
2 did take any notes did you read them to Mr. Walker or have
3 him sign them?

4 A No, sir.

5 Q In your original interview did you attempt to
6 take any verbatim statement or substantially verbatim state-
7 ment?

8 A Substantially verbatim.

9 Q You indicate that you later had a signed state-
10 ment from Mr. Walker, did or not that signed statement
11 incorporate or substantially incorporate the information in
12 the notes of any interview that you had?

13 A Yes, it did, and he read the statement, approved
14 it, and signed it.

15 Q In the original interview or in the second
16 interview, did you use any mechanical means of recording
17 the interview?

18 A I used a typewriter as I recall.

19 Q In the first interview or the second interview?

20 A The second interview.

21 Q Did you use any recording device?

22 A No, sir.

23 Q In the original interview the notes that you
24 did take, were those by longhand or how?

25 A Longhand and some shorthand.

1

THE COURT: May I have a copy of the statement?

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Will the defense provide me with a copy please?

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Q

(By the Court) I show you a statement on Federal

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Bureau of Investigation letterhead dated April 1, 1961, and

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ask you to examine that.

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Yes, sir.

End Tk 2 7

Tk 3 fls. 8

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1 Q The Court understands that the statement that you
2 have just examined, the statement which has been furnished by --
3 a copy which has been furnished to the defendants in this case
4 with regard to the witness James Thomas Walker, does or not
5 that statement substantially incorporate what any notes you
6 may have taken recorded of your interview with Mr. Walker?

7 A This is my report of the two interviews with Mr.
8 Walker and this is the original signed statement which I took
9 from Mr. Walker on the occasion of the second interview on
10 April 1, 1963.

11 Q Well, do those statements substantially incorporate
12 any notes that you may have taken on the original interview?

13 A Yes, sir. After the report was dictated, I read
14 it, checked it against the notes and placed my initials thereon
15 to indicate that it was substantially a verbatim recital of
16 what Mr. Walker had told me on the two occasions.

17 Q Do you have any original notes?

18 A No, sir.

19 Q What did you do with the original notes?

20 A Destroyed the notes after I had approved this.

21 Q And why did you do that?

22 A We do not consider that the notes are of evidentiary
23 value and it is our policy to destroy the notes after we have
24 prepared this type of report.

25 THE COURT: All right. I believe that will be

1 all, Mr. Sheets.

2 MR. SILETS: Your Honor, we would like leave to
3 cross examine.

4 THE COURT: This is not an adversary proceeding,
5 Mr. Silets.

6 MR. SILETS: Your Honor, I am afraid the cases
7 say that the defense have the right to examine the witness.

8 MR. REDDY: We understand he's a Court witness.

9 THE COURT: Beg your pardon?

10 MR. REDDY: I understand he's a Court witness.

11 THE COURT: Do you have any authority, Mr. Silets?

12 MR. SILETS: I think if the Court will look at
13 Killian case, decided by the Supreme Court, as well as
14 Campbell versus the United States, where the procedure has
15 been outlined, the Court will see that the procedure --

16 THE COURT: (Interposing) The Campbell case
17 specifically says it is not an adversary proceeding, does it
18 not, Mr. Silets?

19 MR. SILETS: That is correct, your Honor. That is
20 why the Campbell case stands to the proposition that this is
21 the Court's witness and yet the cases seem to hold that the
22 defense is given the opportunity to examine the witness,
23 though he has been called by the Court, and when the cases
24 say it's not an adversary proceeding, it's for the proposition
25 that we have no obligation to put on any proof.

1 THE COURT: Well, the Court will take under advise-
2 ment your request in that respect.

3 (Witness excused.)

4 THE COURT: Have Mr. Sheridan come in, please.

5 MARSHAL MANSFIELD: Yes, your Honor.

6 MR. DALE: Raise your right hand, please. Do you
7 solemnly swear that the evidence that you will give in this
8 case shall be the truth, the whole truth, and nothing but the
9 truth, so help you God?

10 MR. SHERIDAN: I do.

11 MR. DALE: Have a seat, sir.

12 WALTER J. SHERIDAN,
13 a witness called at the instance of the Court, being first
14 duly sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY THE COURT:

17 Q Would you state your name, please?

18 A Walter J. Sheridan.

19 Q Mr. Sheridan, what is your occupation or pro-
20 fession?

21 A I am a special consultant with the Department of
22 Justice.

23 MR. SCHIFFER: Couldn't hear the answer, your
24 Honor.

25 THE COURT: A special consultant with the Department

1 of Justice.

2 BY THE COURT:

3 Q Would you speak out, please, Mr. Sheridan? How
4 long have you held that position?

5 A Since January, 1960.

6 Q And where are you -- where is your home office or
7 station?

8 A Washington, D. C.

9 Q Mr. Sheridan, have you had the occasion to
10 perform services for the Department of Justice in connection
11 with the case that is now on trial before the Court, United
12 States versus James R. Hoffa, et al?

13 A Yes, your Honor.

14 Q In connection with those services, have you had
15 occasion to interview a witness by the name of Mr. James T.
16 Walker of Nashville, Tennessee?

17 A Yes, your Honor.

End Tk 3
Tk 4 fls

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1 Q In interviewing Mr. Walker at any time did you
2 use any method to record any statements or to write down in
3 longhand notes, shorthand, or by any mechanical means record
4 a statement made by Mr. Walker?

5 A No, Your Honor.

6 Q All right. With regard to a witness by the name
7 of Carl Fields, of Nashville, Tennessee, did you at any time
8 interview or talk with Mr. Fields?

9 A Yes, Your Honor.

10 Q In any interview or talk with Mr. Fields did you
11 record in any way his interview or conversation by any
12 mechanical means or by longhand or by shorthand or by any
13 other means?

14 A No, Your Honor.

15 Q All right. That will be all, Mr. Sheridan.

16 MR. SCHIFFER: Your Honor, on behalf of Defendant
17 Parks may we respectfully ask that we be permitted to cross
18 examine Mr. Sheridan?

19 THE COURT: If you have any question you wish to
20 submit, gentlemen, you may submit them to the Court and the
21 Court will submit such questions as it deems proper in this
22 respect. Have Mr. Sheets return. May the Court have the
23 copy of the Jencks act statement on the witness, Carl Fields
24 that was furnished to defense counsel? Does anyone have
25 that copy? Would the defense provide me with a copy or

I N D E X

VOIR DIRE EXAMINATION BY THE COURT

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I N D E X (continued)

VOIR DIRE EXAMINATION BY THE COURT (continued)

<u>VENIREMAN</u>	<u>PAGE</u>
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11, Defendant Campbell	Questionnaire	1027
12, Defendant Campbell	List of Questions	1207
13 (Collective Exhibit)	List of Questions	1209
Defendant Hoffa et al		

1 copies that you were provided?

2 MR. BERKE: It is difficult to read, Your Honor,
3 but that is a copy.

4 MR. HOOKER: We have got a better one than that
5 somewhere, haven't we?

6 THE COURT: I believe there was a second page
7 yesterday.

8 MR. REDDY: That is the one we're looking for,
9 Your Honor.

10 THE COURT: A single page.

11 WILLIAM L. SHEETS,
12 a witness called at the instance of the Court, having first
13 been duly sworn, was recalled and examined and answered as
14 follows:

15 DIRECT EXAMINATION

16 BY THE COURT:

17 Q Mr. Sheets, in your performance of your duties as
18 a member of the Federal Bureau of Investigation, did you in
19 connection with the case now on trial, at any time interview
20 a witness by the name of Carl Fields?

21 A Yes, sir.

22 Q Do you recall upon what occasion or occasions
23 you interviewed Mr. Fields?

24 A I first interviewed him the latter part of
25 January of 1963. And later the latter part of March of 1963.

1 Q At the time of either of those interviews did you
2 by any means record or transcribe or take down by mechanical
3 means or by longhand or shorthand any statement of Mr. Fields?

4 A As I recall, I merely took notes of the interview.

5 Q Did you or not after completing the interview read
6 the notes to Mr. Walker? Or ask that he read them and sign
7 them?

8 A I do not recall that I took a signed statement
9 from Mr. Fields. I took notes and dictated a report of the
10 interview with him.

11 Q Did you ever attempt to take a verbatim statement
12 or substantially verbatim statement from Mr. Fields?

13 A Yes, sir.

14 Q Let me show you two documents which have been
15 submitted to the Court as being the documents delivered unto
16 the defendants with regard to the witness Fields in accordance
17 with the Jencks Act or Title 18, Section 3500, would you
18 look those over please?

19 A Yes, sir. If Your Honor please, the first document
20 is my report.

21 MR. SILETS: Your Honor--

22 THE COURT: Just identify them.

23 MR. SILETS: Your Honor, I'm going to interpose
24 an objection to the Court showing the witness this statement
25 under the theory of the United States versus Campbell, I don't

4-4 . Sheets - Direct

1846

End Tk 4

Tk 5
follows

1 believe that the Court should show the statement to the witness
2 for his obligation is to establish if he can what statements
3 he wrote, where the notes are, and so forth. I think it is
4 error for the Court to show that statement to the witness.

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TK 5
EW 1

• Sheets - Direct

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1 THE COURT: The showing of the statement was to
2 the witness, namely Mr. Fields, was it not in the Campbell
3 case?

4 MR. SILETS: I think on the inquiry of the
5 particular agent also, your Honor.

6 THE COURT: All right. Overrule the objection.

7 A The one-page document is the report that I
8 dictated on my first interview with Mr. Fields on January
9 29, 1963.

10 Q Does or not that document substantially incor-
11 porate any information that you may have taken down?

12 A It does.

13 Q And notes or otherwise at that interview?

14 A Yes, sir.

15 Q With regard to the second document?

16 A The second document appears to be a copy of a
17 signed statement I took from Mr. Fields on March 26, 1963,
18 which he read, approved, corrected where indicated, and
19 signed. This is a statement that Special Agent Edward T.
20 Steele and I took from Mr. Fields.

21 Q Do those two documents substantially incorporate
22 all information which you received or transcribed or took
23 down or recorded or wrote notes upon in your interviews with
24 Mr. Fields?

25 A Yes, sir. I do not know whether there is another

1 document about this interview or not. At times there may
2 be something he says in addition to what is in the signed
3 statement and in that event we add it to the interview report.

4 Q Do you know of any other such?

5 A I do not know of any, if there--

6 MR. NEAL: (Interposing) There was another one.
7 It was turned over to defense counsel. I hand the two
8 originals up to the Court. Both of those were turned over
9 to the defense counsel. That might be what the witness
10 means. They would appear to be the same thing only in dif-
11 ferent format.

12 BY THE COURT:

13 Q Well, I show you two documents handed me by the
14 government, one dated March 26, 1963, Nashville, Tennessee,
15 and the other being dated April the 1st, 1963, Nashville,
16 Tennessee, the latter being upon Federal Bureau of Investi-
17 gation stationery.

18 MR. SCHIFFER: Your Honor, on behalf of the
19 Defendant Parks at this point, an interview of the statement
20 made by Mr. Neal, I would like to strongly suggest to the
21 Court that I object to those statements being handled in
22 this fashion because Mr. Neal says they are substantially
23 the same or the verbiage is the same, he indicates that
24 those two documents in all respects are mutually exclusive.

25 THE COURT: Have both of them been furnished to

1 defense?

2 MR. SCHIFFER: Yes, and I state to the Court and
3 upon reading of them in certain respects they are mutually
4 exclusive and we certainly have shown now the right to cross-
5 examination of this witness and Mr. Sheridan, who gave this
6 man his orders.

7 BY THE COURT:

8 Q All right. With regard to the latter two docu-
9 ments that I have given you, are those documents or do those
10 documents or not substantially incorporate all information
11 which was in any way recorded by you in any interviews with
12 Mr. Fields?

13 A Yes, sir.

14 Q What did you do, if anything, with any individual
15 notes that you may have taken in any interviews with Mr.
16 Fields?

17 A I destroyed them.

18 Q All right. And why?

19 A It's our policy to destroy notes of that
20 character because we do not feel that they are of evidenciary
21 value. The notes are merely taken so as to enable you to
22 dictate a report of substantially what the men said.

23 Q And did you do that in these reports?

24 A Yes, sir.

25 THE COURT: All right. All right. That will be

1 all.

2 (Witness excused.)

3 THE COURT: All right. Gentlemen, if there are
4 any further inquiries that you feel the Court should direct
5 along these lines you should submit them to the Court.

6 MR. SCHIFFER: If your Honor please, at this
7 time I respectfully move that you strike the testimony of
8 Mr. Carl Fields and Mr. Walker on the ground that the
9 destruction of the original notes and all other memoranda
10 by the agent of the Department of Justice, by the destruction
11 of the original notes and by other memorandum they made on
12 this case as a result of their interviews or various inter-
13 views, substantially deprives the defendant of original
14 exculpatory material which is told to the special agent.

15 And I point out for your Honor's consideration
16 that where you take away from the defendant, Parks in this
17 instance, his right to cross-examine on the element of
18 credibility of the two witnesses who have just left the
19 stand, by them being permitted to get off the stand without
20 being cross-examined as to the true reason why the notes
21 were destroyed--

22 THE COURT: (Interposing) Mr. Schiffer, do you
23 have any authority for the proposition?

24 MR. SCHIFFER: Your Honor, every now and then
25 in a criminal case you will find that we are going to be

1 embarking on new situations which are not covered by past
2 cases, but the law is a living expanding thing.

3 Now, my point here simply is this, that it's
4 manifestly unfair to a defendant to permit a government agent
5 to take the stand. He admits to the fact that he had an
6 interview and some other interviews, then with permitting
7 the agent to edit all of his own notes and by permitting
8 him legally to destroy his original notes and all his other
9 memoranda. How do we know, without the test of cross-
10 examination, that that agent has been thoroughly honest
11 where the defendant is concerned? How do I know as to this situa-
12 tion, and I suspect it, nevertheless, that material which
13 is exculpatory for my defendant, Mr. Parks, has been
14 deliberately destroyed by the government to prevent him
15 from seeing other Jencks Act disclosures, the material
16 which would show he was innocent and actually the victim
17 of a plot? How do we prevent a frame-up then, your Honor,
18 if we are to be prevented from seeing these notes and per-
19 mitting them to destroy evidence, is what it means.

20 To that extent, your Honor, I take an exception.
21 I object and I ask again, I ask this most respectfully,
22 that this Witness Parks be accorded his constitutional
23 rights so he can confront the witnesses against him, which
24 is expressly what these last two witnesses have done, and
25 I want the opportunity to show whether or not, whether in

5^v - 6 .

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1 good faith or bad faith, it doesn't make any difference,
2 the actually destroyed evidence which shows his innocence.

End Tk 5³
Tk 6 fls.

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1 MR. SILETS: If your Honor please --

2 THE COURT: All right.

3 MR. SILETS: I cite to the Court the decision of
4 Campbell versus United States, I have only the Supreme Court
5 Report, 83 Supreme Court, 1356, at page 1364. And I'm now
6 referring to the dissenting opinion.

7 THE COURT: What is the page, please, Mr. Silets?

8 MR. SILETS: It is 83 Supreme Court Reports at
9 1364. At that point, Mr. Justice Clark with whom Mr. Justice
10 Harlan and Mr. Justice Stewart joined in the dissent had oc-
11 casion to review the testimony which occurred in the case in
12 the lower court. Now, if the Court will take the time to look
13 at that, you will see extensive cross examination being per-
14 mitted. And the Court asking question, the defense asking
15 question and even the government asking questions.

16 Now, your Honor, I don't think the defense ought
17 to be restricted by questions submitted to the Court in writing.
18 I think that in the course of a cross examination a witness
19 is, we hope the purpose of cross examination is to elicit
20 information which was not known prior to the time of the
21 cross examination. If we are restricted merely to the
22 questions we submitted to the Court in writing, the very
23 nature and purpose of cross examination is obviated.

24 Furthermore, I ask the Court not only to limit
25 its examination on this point to ascertain the facts of these

1 notes, to these two witnesses, but on behalf of the Defendant
2 Dorfman I would like to have a witness called also and the
3 name, I'm not aware of the name of the individual, and if the
4 Court would instruct the prosecution not to contact this
5 individual until such time as the Court has ruled as to
6 whether this person may be called, I will tell the Court who
7 that person is. And who may have great knowledge on the
8 testimony that was given here this morning. If I can have
9 that understanding that the prosecution will not consult with
10 this person prior to the time the Court rules or the person
11 is to take the stand, if that person does take the stand, I
12 would like to disclose the name.

13 THE COURT: Well, the problem we have, gentlemen,
14 of course, is that these matters are collateral to the trial
15 of the case and while the Court wishes to give you every right
16 in that respect, we cannot just spend indefinite time and
17 unlimited cross examination on these collateral issues. If
18 so, we never would get on with the trial of this lawsuit. I
19 will request that these witnesses remain available, and I will
20 study these cases some further, and if I conclude that it is
21 proper to permit cross examination by the parties, why, I
22 will have these witnesses recalled for that purpose.

23 MR. SILETS: Your Honor, I would also like to have
24 leave to call one witness.

25 THE COURT: All right, you may have that. You

1 certainly may have that leave.

2 MR. SILETS: I would like to have --

3 THE COURT: (Interposing) If it is material, if
4 any foundation is laid in the record for doing so.

5 MR. SILETS: Yes, sir, I would like to do so. I
6 would like to have Mr. Sheridan's secretary called as a
7 witness, if your Honor please. She can testify as to his
8 procedure and whether or not she has typed any notes he has
9 ever taken. She is a girl who travels with him around the
10 country. She knows his procedures. She knows for a fact
11 whether he ever took notes and whether they were ever typed
12 up. He testified he never took any notes and I know for a
13 fact government investigators always take notes.

14 MR. NEAL: Your Honor, I'm sure that Mr. Sheridan's
15 secretary would testify truthfully and I'm sure Mr. Sheridan
16 has testified truthfully. This trial must move on, your
17 Honor. As long as we do this, the defendants and defense
18 counsel are doing exactly what they set out to do, prolong the
19 case, confuse. It seems to me to be obvious that the defend-
20 ants must show some basis for an inquiry like this. It must
21 show some reasonable grounds to believe that some notes were
22 destroyed. Some notes were taken and some notes destroyed.
23 Now, they have shown absolutely nothing. Mr. Sheridan has
24 taken the stand and said he took no notes. Now, I don't know
25 if they called another person why couldn't they call some

1 other person. Why couldn't they call the marshal who might
2 be around the building. It seems to me there has to be some
3 foundation laid or the hearing should be cut off.

4 THE COURT: All right. Well, the Court will at
5 this time reserve the request of defense to cross examine
6 further the witnesses Mr. Sheets and Mr. Sheridan. The Court
7 will overrule the request with regard to interviewing or
8 examining secretaries.

9 MR. SILETS: Not secretaries, your Honor. May
10 the record show plainly a particular secretary, Mr. Sheridan's
11 secretary.

12 THE COURT: All right.

13 MR. REDDY: At this time, may it please the
14 Court, I would like to again take exception to Mr. Schiffer's
15 remarks about a plot and frame-up and such language.

16 MR. SCHIFFER: Well, your Honor, it is what
17 permeates --

18 MR. REDDY: (Interposing) No evidence of proof.

19 THE COURT: It would be more helpful, gentlemen,
20 if counsel were to address themselves to the law and the
21 logic and less volume and vehemence, but then that I guess is
22 a part of the equipment.

23 MR. SCHIFFER: For the record, may I say, if your
24 Honor please, that this is the kind of a case that cannot be
25 tried with silk gloves. When I find that my defendant whom I

1 represent is being framed by the government with Mr. Neal and
2 the Attorney General and all of those assisting them and even
3 taking the stand here depriving me of evidence which would
4 exculpate my defendant, I certainly am not going to still my
5 tongue. I will raise it in protest.

6 THE COURT: All right, sir. All right. Well,
7 the Court finds that the documents furnished defense with
8 regard to Witness Fields and with regard to Witness Walker
9 are all the documents producible under the Jencks Act. Now,
10 are we ready to proceed with further testimony? The Court at
11 this time will sustain the objection of the defendants to
12 the testimony of Mrs. Leath received last evening after the
13 jury had been excused. And relating to any conversations of
14 Carl Fields with this witness, Mrs. Leath, and his mother.
15 All right.

16 MR. NEAL: May I proceed, your Honor, with the
17 next witness?

18 THE COURT: Yes, sir, ready to proceed.

19 MR. BRANSTETTER: May it please the Court, I have
20 a matter that I believe is of some significance and I'm not
21 sure the Court has fully ruled on dealing with the witness --

22 THE COURT: (Interposing) Yes, sir.

23 MR. BRANSTETTER: And I don't think that it con-
24 stitutes fully a matter of re-argument, since I understood the
25 Court was to study further this question of agency. And also

1 since this past evening I had some little opportunity to look
2 into some of the law on the subject, and one of my assertions
3 to the Court with reference to what the law was may not have
4 been totally accurate. I may have misunderstood. So some-
5 times the student becomes a teacher.

6 The matter of criminal agency or co-conspirator
7 and I would want to make the objection to the method that
8 this was handled, the method in which the Court handled this,
9 and also the instruction that was given to the jury. So,
10 this will constitute primarily an objection with the primary
11 statement as to why, dealing with the specific instruction
12 given by the Court with reference to this matter of criminal
13 agency.

End Tk 6
Tk 7 fls

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1 I would state it thusly, that when a party to a
2 lawsuit has expressly authorized another to speak or to act
3 on his behalf it is obvious and it is an accepted exception
4 to the hearsay rule. The question is in the absence of
5 express authority, though, is how far will the statement of
6 an agent be received as a principal's admission by virtue of
7 the employment relationship. Cases hold that the words of
8 the agent will be received in evidence as the admission of
9 the principal if they were spoken or written within the
10 scope of the authority of the agent to speak for the employer,
11 but all cases hold that the party offering evidence of the
12 alleged acts, admissions or acts must first prove the fact
13 and scope of the agency. This is quite evident in Wigmore
14 on Evidence, Section 789.

15 THE COURT: Repeat your statement, Mr. Branstetter.

16 MR. BRANSTETTER: That all cases hold that the
17 party offering evidence of the alleged agents admission or
18 acts must first prove the fact and scope of the agency of
19 the witness before they can proceed further.

20 THE COURT: All right.

21 MR. BRANSTETTER: This is 4 Wigmore on Evidence
22 at Section 1078, American Jurisprudence on Evidence, Section
23 597.

24 Now, the fact and the scope of the agency--

25 THE COURT: (Interposing) That's Am. Jur. on

1 Evidence?

2 MR. BRANSTETTER: Yes.

3 THE COURT: At what section?

4 MR. BRANSTETTER: Section 597.

5 THE COURT: All right.

6 MR. BRANSTETTER: Now, here is the--, I did not
7 state with precision at least the next point on yesterday is
8 the reason I state it and I want to correct it. The fact
9 and scope of the agency of the witness may be proved by the
10 testimony of the purported agent himself or by circumstantial
11 evidence. This is contrary, I think, to the position I took
12 yesterday and I do not want to represent to the Court some-
13 thing is the law that I cannot reasonably assert.

14 THE COURT: All right.

15 MR. BRANSTETTER: But evidence of the purported
16 agents past declarations not on the witness stand asserting
17 the agency are inadmissible hearsay when offered to show the
18 relationship. That is the qualifying statement and that was
19 my assertion yesterday. I had reversed the statement.

20 Now, this goes then to the objection. If the
21 preliminary fact the witness' agency is disputed, as here,
22 the question is for the Judge and not for the jury. This is
23 discussed at considerable length in McCormick on Evidence,
24 Page 520.

25 Now, may it please the Court, on Page 1801 of the

1 record of yesterday the Court stated thusly, and I quote,
2 "That if the jury believes from evidence in the record other
3 than hearsay statements here sought to be introduced, or
4 hearsay statements heretofore introduced, that an agency or
5 a conspiracy existed between the witness Walker and the
6 Defendant Mr. Parks, then the statements of Mr. Walker to this
7 witness, Mrs. Leath, may be considered by the jury as to
8 the Defendant Parks but only as to the defendant Mr. Parks
9 and not as to any other defendant. They will not be con-
10 sidered as to the Defendant Parks, however, unless the jury
11 finds from other evidence in the case, excluding hearsay
12 statements attributed to the Defendant Parks, that Walker
13 either was an agent of Mr. Parks at the time the statements
14 were made or was acting at the time in the scope and was
15 acting at the time in the scope and course of the agency or,
16 two, that Mr. Walker was a party to a conspiracy with Parks
17 and that the statements attributed to Mr. Walker were made
18 in furtherance of this conspiracy and at a time when the
19 conspiracy was in effect. All right."

20 This was the statement and the instructions given
21 to the jury.

22 We object to that being done in that fashion for
23 the following reasons additionally:

24 If the preliminary fact of the declarant's agency
25 is disputed, as it is here, the question is for the Judge and

1 not for the jury. Again McCormick on Evidence, Section 53,
2 Page 123, and also--

3 THE COURT: (Interposing) I didn't get that,
4 Mr. McCormick--

5 MR. BRANSTETTER: (Interposing) Section 53,
6 Page 123, and also at Page 520. I referred to that previously.

7 THE COURT: All right.

8 MR. BRANSTETTER: The burden of proof is on the
9 party who asserts that such agency exists and also the
10 burden of proof is on the party asserting the scope and
11 course of the agency. The Court, therefore, erred in leaving
12 it to the jury to decide this preliminary question of fact
13 of agency or conspiracy.

14 The Court also erred when it spoke of statements
15 attributed to Mr. Walker as a co-conspirator in failing to
16 inform the jury, as it did when it spoke of agency in the
17 previous paragraph, that the jury must also find, from other
18 evidence in the case that a conspiracy existed from other
19 evidence in the case.

20 THE COURT: Would you re-state that proposition,
21 Mr. Branstetter?

22 MR. BRANSTETTER: Yes. I say the Court also
23 erred when it spoke of statements attributed to Mr. Walker
24 as a co-conspirator in failing to inform the jury, as it did
25 when it spoke of agency in the previous paragraph, that the

1 jury must also find from other evidence in the case that a
2 conspiracy existed from other evidence in the case.

3 May it please the Court, these are fairly rough
4 notes but I will be very pleased to furnish the Court with
5 them and I was reading substantially from them.

6 THE COURT: I would appreciate it.

7 MR. BRANSTETTER: I might suggest that the bias
8 of both instructions that I just quoted previously is that
9 the Court left it to the jury to find from other evidence
10 in the case that Walker was an agent of Parks or a co-
11 conspirator, but that is precisely why the Court could not
12 leave this evidence, let this evidence in, without first
13 making a preliminary determination of fact that Walker was
14 either an agent or a co-conspirator of Parks.

15 Now, obviously the Court could not make such a
16 finding of fact in view of Walker's own testimony, which is
17 obviously not a conclusion of law, that he would not agree to
18 any unlawful act with Parks and that he was not Parks' agent.

19 The government's assertion that this is a clear
20 conclusion of the law is erroneous.

21 Now, furthermore, there was no other evidence in
22 this case and, therefore, there was no basis for the Court
23 being able to make a determination that Walker was an agent
24 or a co-conspirator of Parks without unlimited authority.

25 Walker testified specifically, and I quote,

1 "I do not know that much about Fields and that I was a law
2 enforcement officer and didn't want any part of that type of
3 thing." Transcript Page 1543.

4 Walker testified at Page 1547 that Parks called
5 him on the phone and asked if he had done anything toward
6 our conversation and I told him no.

7 The government would read this as meaning that
8 the jury could find that he had told him yes.

9 On Page 1549 Walker testified that Parks told him
10 that he was opening up a dry cleaners and pursuant to that
11 Walker's statement that he had heard that Walter Jackson and
12 Carl Fields were in need of employment and Walker called him
13 and introduced him to Mr. Parks but heard no part of their
14 conversation. Transcript Page 1550.

15 Walker then related that Parks asked him that if
16 he had heard from Fields to tell him to call Fields and tell
17 him what he was going to do. That's Page 1551.

18 And that Carl Fields told him he hadn't done
19 anything, specifically, Carl Fields told him that Mr. Parks
20 wanted to know what his father was going to wear and that is
21 all he wanted to know, what his father was going to wear.
22 Transcript Page 1552 and 53.

23 He then asked him to get in touch with Mattie
24 Fields Heath, Page 1557, and Walker testified he spoke to
25 Mattie and asked her, "If her brother had discussed the

7-7 .

1865

1 matter with her."

2 She stated that he didn't want any part of it and

3 Walker told her that he was glad and that if they disturbed

4 her any more to call the FBI or the police.

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1 That is Walker's testimony. We must bear in
2 mind this, that as far as Walker was concerned all he thought
3 that Carl Fields was supposed to do for money was to state
4 what his father was going to wear. Now, surely an agent of
5 Mr. Parks bent on doing something wrong does not tell the
6 person whom he sees and as the government claims as Parks'
7 agent, that if they disturb her any longer to call the police.

8 The government's answer to all of this is, "The
9 statement Walker made that he was not the agent is a legal
10 conclusion on his part."

11 What Walker testified to were facts. It is true
12 a jury does not have to believe what Walker said but if he
13 has never been--but it has never been the law that disbelief
14 of a fact by the jury is equivalent to proving a fact.

15 Furthermore, Walker on cross-examination stated
16 specifically he was not an agent. He did not agree to do
17 anything wrong. And the government never produced any wit-
18 ness to show that this was not a fact. Therefore, under
19 the circumstances it would be clear reversible error to call
20 Walker an agent for Mr. Parks, at the very most under any
21 theory that the government can conjure up in this record at
22 this moment by any stretch of the imagination on assertion
23 of an agency, if there was an agency, it was as follows:

24 One, offer of job for Fields' son.

25 Two, find out what clothes the father was going

1 to wear.

2 Three, find out if the brother had talked to his
3 sister about the matter.

4 Clearly this is not making a general agent out
5 of Mr. Walker for Mr. Parks to bind Parks without limitation.
6 To give a simple example or illustration, if I hire a cab to
7 take me to the courthouse, I ask the cab driver to bring my
8 law books into the courtroom. If the cab driver, when he
9 goes into the courtroom, throws the books at Mr. Neal, could
10 I be blamed? Would I be responsible for the acts of the cab
11 driver in acting beyond the scope of his authority?

12 In every case cited by the government there was
13 sufficient evidence of agency and sufficient evidence that
14 the acts of the agent were done with the principal's authority
15 and under their direction.

16 In this case it is literally fantastic that
17 Walker, a policeman according to his own testimony, was made
18 out as an agent of Parks.

19 On Page 1776, Neal gives the theory away. He
20 says this, we have created this agency by the testimony of
21 Walker that Parks directed him to do this. He created, all
22 right, he manufactured it, and there is nothing in the
23 record to sustain it.

24 THE COURT: All right, do I understand then
25 that you will make those notes available?

1 MR. BRANSTETTER: Yes, I state to the Court
2 that there are some scribblings and I will also furnish
3 the government a copy. I will make a copy.

4 THE COURT: The Court will reserve ruling.

5 MR. NEAL: Your Honor, the government can't
6 answer every one of these arguments. They are filibusters.
7 Once we have decided something, we must go on or we will
8 be here all year. The government can't answer that. It is
9 absurd argument. The transcript points out the agency, the
10 scope, went right in there to find out what clothes the
11 juror was going to wear as Parks sent him in. We can't
12 answer these without losing, they know it, and they are
13 filibusters.

14 MR. SCHIFFER: On behalf of Mr. Parks, if any-
15 body is filibustering, it is the government. By the time
16 the government got down to show what this case was about,
17 they should have moved to dismiss the indictment themselves.

18 Insofar as the Defendant Parks is concerned,
19 your Honor, may I state we would like to call Mrs. Mattie
20 Leath if we want to get on with the case, if the government
21 doesn't want to, let them dismiss the indictment.

22 THE COURT: Let's have the jury brought in and
23 have Mr. Leath recalled as a witness.

24 MR. NEAL: Your Honor, do I understand that
25 they are going to call Mrs. Leath again at this time? They

1 waived cross-examination? Or conducted cross-examination,
2 did they?

3 THE COURT: They may call Mrs. Leath if they
4 desire to at this time.

5 MR. BRANSTETTER: While the jury is coming, would
6 it be appropriate for me to ask the Court if the Court ruled
7 and I have not heard the question dealing with declarations
8 against interests?

9 THE COURT: Yes, the Court used in the instruc-
10 tions to the jury the Court was referring to admissions,
11 admissions of a party out of court admissions of a party
12 and I think that the instructions are clear in that respect.
13 The Courts do frequently interchangeably use declarations
14 against interests and admissions, although it is clear here
15 and there is a technical difference between the two. It is
16 clear here what the Court meant.

17 (Thereupon, the jury of 12 and 4 alternates
18 were brought into the courtroom and the following proceedings
19 were had, to-wit:)

20 THE COURT: All right, may we have the witness
21 come in?

22 (Thereupon, the witness, Mrs. Mattie Leath,
23 called at the instance of the United States of America, and
24 having been previously duly sworn, was recalled to the
25 witness stand by the defense and the following proceedings

1 were had, to-wit:)

2 THE COURT: Just have a seat, Mrs. Leath.

3 MR. SCHIFFER: May I proceed?

4 THE COURT: Yes.

5 MR. SCHIFFER: Thank you, your Honor.

6 FURTHER CROSS EXAMINATION

7 BY MR. SCHIFFER:

8 Q Now, Mrs. Leath, your family is a closely knit
9 family, is it not?

10 A Yes, it is.

11 Q Will you tell us again the names of your
12 individuals who comprise your family, your mother and father
13 and brothers and sisters?

14 A The names of all of the individuals of my family?

15 Q Yes.

16 A My mother is Mrs. Annabelle Fields. My father
17 is Mr. Gratin Fields, Sr. You want the names of the family
18 who are out of town?

19 Q Yes, all your brothers and sisters.

20 A I have a brother, Gratin Fields, Jr.
21 I have another brother, Everett Leon Fields.
22 I have another brother, Carl Edward Fields.
23 I have another sister, Mrs. Risie Tease.
24 I have another sister, Mrs. Ernestine Gay.

25 Q Now, with reference to some of the testimony

1 yesterday, may I ask you, are you regarded as what shall we
2 call the boss of the family?

3 A No, I am not.

4 Q Then, any reference to that would be in error?

5 A Yes.

6 Q And would you tell us what your schooling has
7 been?

8 A I have a master's degree in social work. That
9 is as high as I go.

10 Q And, Mrs. Leath, would you give false testimony
11 under oath to save your brother, Carl, in the event he did
12 something he should not have done?

13 MR. HOOKER: We object to that.

14 THE COURT: Overrule the objection.

15 THE WITNESS: Am I to answer?

16 THE COURT: Yes.

17 BY MR. SCHIFFER:

18 Q Yes.

19 A No, I would not give false testimony.

20 Q You would not give any false statement or say
21 anything which is false?

22 MR. HOOKER: If your Honor please, that is
23 clearly argumentative and clearly a matter for the jury.
24 I have never heard of any such question as that permitted.

25 THE COURT: Yes, it is quite argumentative.

1 MR. SCHIFFER: Let me rephrase the question then.

2 BY MR. SCHIFFER:

3 Q If you knew your brother, Carl Fields, had
4 deliberately made a false statement to the government or in
5 an affidavit, and you with your education knowing what that
6 might mean to him, and you were called upon to testify to
7 the same incidents, would you then lie under oath to save
8 your brother?

9 A I would not.

10 MR. HOOKER: We object to that as being argumen-
11 tative.

12 THE COURT: She has already answered it. She
13 said she would not.

14 MR. HOOKER: It is highly improper.

15 BY MR. SCHIFFER:

16 Q Then I take it when you say you would not you
17 would not under any circumstances?

18 MR. HOOKER: We object to that.

19 THE COURT: Sustain the objection.

20 BY MR. SCHIFFER:

21 Q Even if you were charged with murder you would
22 not? If you were charged with murder you would not?

23 MR. HOOKER: We object to that.

24 THE COURT: Sustain the objection.

25 BY MR. SCHIFFER:

1 Q Now, you gave an indication yesterday, Mrs.
2 Leath, that you were dissatisfied with any connection with
3 what you would term the Hoffa case, is that correct?

4 A Yes.

5 Q And is it not a fact that you know from news-
6 paper publicity and other news media that the Department of
7 Justice has been carrying on a bitter campaign against Mr.
8 Hoffa?

9 MR. HOOKER: We object to that.

10 THE COURT: Sustain that.

11 BY MR. SCHIFFER:

12 Q You knew of your own knowledge, did you not, as
13 an educated person, and I suppose you read newspapers?

14 A Yes, sir, I do.

15 Q You have read newspapers for the last, say, ten
16 years?

17 A I read the newspapers.

18 Q And you are acquainted with the name Hoffa in
19 the news, are you not?

20 A I had heard the name, yes.

21 Q And you have heard the name Robert Kennedy, the
22 Attorney General, have you not?

23 A Yes, I have.

24 Q And you knew, did you not, that Robert Kennedy
25 had expressed himself as being opposed to Mr. Hoffa, isn't

1 that correct?

2 MR. HOOKER: We object to that.

3 THE COURT: Sustain that objection.

4 MR. REDDY: We move to strike that question.

5 THE COURT: Yes, disregard such arguments of
6 counsel, ladies and gentlemen of the jury.

7 BY MR. SCHIFFER:

8 Q You knew that there was bad blood between the
9 Attorney General and Mr. Hoffa?

10 MR. HOOKER: We object to that.

11 MR. SCHIFFER: That is not argumentative, Judge.
12 I'm asking a question.

13 THE COURT: Sustain the objection.

14 BY MR. SCHIFFER:

15 Q Did you know, may I phrase it that way, your
16 Honor?

17 MR. HOOKER: If your Honor please, we submit
18 that counsel ought to be instructed to discontinue this.

19 THE COURT: This is not a place for the argument
20 of any case to the jury.

21 MR. SCHIFFER: When I'm approaching my subject
22 matter, your Honor, from the pinpoint of bias, I'm testing
23 the credibility of this witness insofar as bias.

24 THE COURT: Let's talk about this witness then,
25 Mr. Schiffer.

1 MR. SCHIFFER: I am speaking of this witness.

2 BY MR. SCHIFFER:

3 Q Do you have knowledge of the facts so far as
4 your state of mind is concerned as you sit here and as you
5 testified yesterday and as you made statements to anybody
6 connected with the government in the past about this case,
7 did you then know that Mr. Robert Kennedy, Attorney General,
8 was prejudiced against any defendant in this case?

9 MR. HOOKER: We object to that.

10 THE COURT: Sustain the objection.

End Tk 8 11
Tk 9 fls.

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1 MR. NEAL: Your Honor, this is the kind of remarks
2 that the Court warned counsel not to get into before the jury,
3 the Court would consider it improper.

4 THE COURT: Yes.

5 MR. SCHIFFER: Your Honor, may we excuse the jury
6 and have a chambers conference?

7 THE COURT: Let's proceed.

8 MR. SCHIFFER: As to what one can inquire?

9 THE COURT: Proceed with the examination of this
10 witness, Mr. Schiffer, and reserve your argument until the
11 appropriate time.

12 BY MR. SCHIFFER:

13 Q Did you have a bias for Mr. Hoffa?

14 A No, I do not.

15 Q Do you have a bias for Mr. Parks?

16 A No.

17 Q None whatever?

18 A No.

19 Q Do you have a bias for your brother?

20 A No.

21 Q Do you have a bias for your father?

22 A No.

23 Q Aren't you favorably inclined toward them?

24 A Sure I am.

25 Q All right. You are favorably inclined toward your

1 father, are you not?

2 A Yes, I am.

3 Q Would you say that you are more favorably inclined
4 toward your father than you are toward Mr. Parks, the defendant
5 here?

6 MR. HOOKER: We object to that, if your Honor
7 please. This is just taking up a lot of useless time about
8 matters that have no connection whatever with the trial of
9 this case.

10 THE COURT: All right. Well, let's move on.

11 MR. SCHIFFER: Examining for bias and state of
12 mind.

13 BY MR. SCHIFFER:

14 Q In this case you know that the Department of
15 Justice is prosecuting for the government and that the
16 defendants here are defending themselves, is that correct,
17 you know that?

18 A Yes, I guess I know that.

19 Q All right. And you have a bias, have you not, in
20 favor of the government as against the defendant?

21 A I don't have a bias, period.

22 Q Well, you once expressed yourself, had you not,
23 according to your own testimony yesterday, that you were sick
24 and tired of hearing about the Hoffa case back there in Nash-
25 ville, is that correct?

1 A Yes, but that doesn't mean that I am biased.

2 Q Well, I am just asking you. Had you so expressed
3 yourself?

4 A Yes, I did.

5 Q All right. And when Mr. Walker came to you you
6 testified he made certain kinds of statements to you?

7 A Yes.

8 Q Concerning the Hoffa case, is that right, as it
9 involved your father?

10 A Yes.

11 Q And he discussed with you the fact that he had
12 spoken with your brother Carl?

13 A Yes.

14 Q And there came a time when you testified, I
15 believe in your mother's household, that it was discussed in
16 the family?

17 A Yes.

18 Q Is that right?

19 A Yes.

20 Q At that time did you feel any bias against the
21 defendants in the case?

22 MR. HOOKER: Object to that.

23 THE COURT: Overruled.

24 A I didn't feel biased, I just -- I didn't feel
25 good about the whole thing because it was aggravating.

1 Q Then you did have a feeling about it one way or
2 the other when you were aggravated?

3 A Yeah.

4 Q As far as the aggravation was concerned, you
5 wanted to help your brother, did you not, Carl Fields?

6 A I didn't want to help anyone because I didn't
7 know my brother was in any trouble.

8 Q Well, had they already discussed in your household
9 that Carl Fields or Mr. Walker, the policeman, or together,
10 had been talking about the case?

11 A I knew he had been contacted, if that's what you
12 mean.

13 Q Well, when you say you knew, are you referring
14 now to what Mr. Walker had told you?

15 A No, I'm talking about what my brother had said.

16 Q At home, at your mother's home?

17 A Yes.

18 Q And so I say you were there then interested in
19 keeping out of the case entirely yourself, isn't that so?

20 A I don't understand what you mean.

21 Q You wanted no part of the case at all, to be a
22 witness or not be a witness?

23 A No, I did not.

24 Q Just didn't want to be a part of the case, is that
25 correct?

1 A That is right.

2 Q All right. Then will you tell us at this time
3 how many times this matter was discussed in your house,
4 mother's household?

5 A I can't rightfully say how many times we talked
6 about it, several times off and on.

7 Q Will you approximate the number?

8 A I don't know, a dozen or more I would say.

9 Q And at these times were all of the members of the
10 family there where it was discussed?

11 A No. You mean all of the members I named of my
12 family a while ago?

13 Q Yes.

14 A No.

15 Q Was Carl Fields, your brother, there all of the
16 time when it was discussed?

17 A Not necessarily all of the time.

18 MR. SCHIFFER: Thank you.

19 MR. NEAL: Now, may it please the Court, I think
20 I am now entitled to go into the time of the first discussion.
21 Mr. Schiffer dwelled upon the discussion in the household and
22 this matter was discussed at length.

23 THE COURT: All right.

24 MR. NEAL: I am entitled to establish the time.

25

REDIRECT EXAMINATION

BY MR. NEAL:

Q Mrs. Leath, when were you first told by Carl Fields about this matter, the approximate time?

A I believe -- now, the date I don't know, but I believe it was the same day that Walker called me.

Q The same day that Walker called you?

A The night, yes.

Q And what did he -- did he tell you about the approach by Parks to him?

A He asked me had Walker called me, and I told him yes, and he told me that Walker talked with him about the situation and I told him not to have anything to do with the mess.

Q When did you first hear about the Defendant Parks and his approach to Carl?

A Oh, probably that same week, I don't remember it was this particular night or not.

Q That same week?

A Yes.

Q You were told then and your family was told about the approach shortly after it occurred then, is that correct?

A Yes.

Q And that the Defendant Parks had improperly -- had approached Carl Fields about his father?

1 A Yes.

2 MR. NEAL: No further questions.

3 THE COURT: All right. Anything further of this
4 witness at this time? All right. Thank you, Mrs. Leath.

5 Come down.

6 (Witness excused.)

7 THE COURT: Call the next witness.

8 MR. NEAL: The government calls Mrs. Mattie Mix.

9 MR. SCHIFFER: Your Honor, I think --

10 THE COURT: (Interposing) Mrs. who?

11 MR. SCHIFFER: Mattie Mix. We will need a
12 conference, your Honor, in the absence of the jury.

13 THE COURT: I didn't get the name.

14 MR. REDDY: Mix (spelling) M-i-x, your Honor,
15 Mattie Mix.

16 THE COURT: All right. Ladies and gentlemen,
17 have to ask you to step out.

18 (Thereupon, the jury of twelve and four alternates
19 were excluded from the courtroom and the following proceedings
20 were had, to-wit:)

21 MR. NEAL: May it please the Court, may I direct
22 some questions to this witness now?

23 (Thereupon, Mrs. Mix was brought into the court-
24 room.)

25 MR. SCHIFFER: Your Honor, we have a statement

1 before any questions are directed.

2 THE COURT: All right.

3 MR. NEAL: May we have the witness excused then,
4 your Honor?

5 THE COURT: All right.

6 MARSHAL MANSFIELD: Come around this way, if you
7 will.

8 (Thereupon, Mrs. Mix was excluded from the court-
9 room.)

10 THE COURT: All right, Mr. Schiffer.

11 MR. SCHIFFER: In an effort to prevent hopeless
12 error in this case, your Honor, I'd like the Court to know
13 that about a year ago or slightly less than that, Mrs. Mattie
14 Mix consulted with me.

15 THE COURT: Consulted with who?

16 MR. SCHIFFER: Consulted with me as an attorney
17 concerning this case. Among the things which she had related
18 to me as an attorney was the fact that she had been harassed
19 and in some instances accused of perjury and lying by members
20 of the Federal Bureau of Investigation concerning matters in-
21 volved here.

22 As a result of all this, she wrote a letter
23 addressed to Mr. Neal on January 27th of this year in which
24 she states that if called upon she would take her constitu-
25 tional rights. I should like to put a copy of this letter in

1 evidence here and ask the Court to read it.

2 MR. HOOKER: Did she write it, Mr. Schiffer, or
3 did you write it?

4 MR. SCHIFFER: I dictated it and she signed it
5 and I offer this in evidence. This is her position on the
6 case, and I offer this in evidence that in any event she not
7 be called before the jury by the prosecution here.

8 MR. NEAL: Let's put the original in. She told
9 Mr. Hooker and Mr. Reddy and I that there is some letter for
10 us and I said, "Who gave you this letter?" She said, "Mr.
11 Schiffer gave me the letter and asked me to sign it."

12 Here is the letter that was delivered to me. I'd
13 also like to state this morning that I said to Mrs. Mix,
14 "Do you mind coming before this stand and answering some
15 questions about who made or who may not have made some phone
16 calls at your place?"

17 She said, "No, I don't mind. I don't know any-
18 thing about those phone calls. I don't mind coming in."

19 She said, "They told me you were going to
20 embarrass me about prior associations and something that
21 happened a long time ago."

22 I am prepared to testify that she told us that
23 this morning. I think Mr. Hooker is prepared.

24 MR. HOOKER: She told us not less than an hour
25 ago.

1 MR. NEAL: I think Mr. Reddy is prepared to
2 testify she told us that this morning. This is an endeavor
3 to obstruct justice and it should not be perpetrated in this
4 courtroom, your Honor. We should call the witness in.

5 MR. SCHIFFER: Every time a witness or a citizen
6 comes up before Mr. Neal and his department and says, "Look,
7 we have certain constitutional rights."

8 Mr. Neal says we are always obstructing justice.
9 Let Mr. Neal change the Constitution.

10 Now, this witness has stated her position. The
11 letter is formed and Mr. Neal has it now. Any attempt by Mr.
12 Neal to take this witness in the face of that letter and
13 produce her before this jury and she takes her Fifth Amendment
14 rights vitiates this entire proceedings. He can ask it
15 whichever way he will, your Honor.

16 THE COURT: Mr. Schiffer, do you have any
17 authority for the position you are taking? It would be very
18 helpful, Mr. Schiffer, if you would cite some authority to
19 the Court for these various positions that you take.

20 MR. NEAL: Your Honor, the case involved is
21 Namat versus United States, a Supreme Court case, Ten Law
22 Edition, 278, your Honor, and that is the reason that Mr.
23 Hooker, Mr. Reddy, and I told the Court what we told the
24 Court this morning.

25 THE COURT: What is the style of the case?

1 MR. NEAL: Namat (spelling) N-a-m-a-t versus
2 the United States. In certain situations, your Honor, where
3 the witness clearly would have a right to the Fifth Amendment,
4 where there is no skulduggery as is going on here, it might
5 be slightly improper to call a witness if you know she is
6 going to take --

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1 MR. HOOKER: Even in that case they held they
2 weren't improper, the majority of the court did, and it was
3 a much stronger situation than this. We don't think it has
4 any application to this case at all.

5 MR. SCHIFFER: I object to the use of the word
6 skulduggery. We are talking about constitutional rights.
7 Anybody that doesn't go along with Mr. Neal's rights are
8 then accused of skulduggery.

9 THE COURT: First, gentlemen, let's clear up one
10 matter with regard to the letter that was tendered here to
11 the Court, the Court would allow that to be identified, marked
12 for identification purposes only unless it was stipulated by
13 the parties and unless it was put in evidence by the proper
14 manner. The Court has no authority to just receive in evidence
15 anything that was handed to it by any counsel.

16 MR. SCHIFFER: I thought the government would
17 stipulate they received the letter.

18 MR. HOOKER: No, we want to get along with this
19 trial.

20 MR. SCHIFFER: Out of the presence of the jury,
21 Your Honor, that the government wants to proceed?

22 MR. HOOKER: No, we want to proceed in the
23 presence of the jury for awhile and get some proof in this
24 case.

25 MR. SCHIFFER: Then on behalf of the Defendant

1 Parks let me say, Your Honor, this would be so highly
2 prejudicial to him that in any event I expect to reverse the
3 matter no matter what happens in this case.

4 MR. NEAL: Your Honor, Mr. Hooker, Mr. Reddy and
5 I are prepared to testify on this and no longer than an hour
6 ago this woman told us she wasn't insisting on the grounds of
7 defense counsel that she would testify about this no matter
8 what information she had and whether or not she made a
9 statement and what knowledge she had about the phone calls,
10 that is all we are going to ask her. No longer than an hour
11 ago. She said nothing about a right to a constitutional
12 claim and she wouldn't claim this.

13 MR. SCHIFFER: Except this, Your Honor, only this
14 morning walking out of the hotel she stopped me in the lobby
15 and told me about it and said that was her position. I said,
16 you do whatever you want. This is personal with you. Let
17 me tell you something else, Judge, what scared her was that
18 the Federal Bureau of Investigation told this woman after she
19 told what Mr. Neal has just related to the Court, told her,
20 you are lying and perjuring yourself and we will put you in
21 jail if you say that in court. Well, I take that as a
22 threat, Judge, with an understatement.

23 MR. NEAL: May it please the Court, this lady
24 testified before the Grand Jury. Testified freely. Voluntarily.
25 And said she had nothing in the world to hide about the

1 subject matter about which we are going to ask her. I have
2 her grand jury testimony and would hand it to the Court.
3 Now, we are entitled to call this lady and ask her about all
4 the circumstances enomoring to what we represented to the
5 Court this morning and which we are prepared to take the
6 stand and testify.

7 MR. SCHIFFER: I believe we are entitled to
8 preliminary examination of this woman to see what her position
9 is. If she signed that letter and what she tells the Court
10 certainly without the presence of the jury. She was threatened,
11 if she was threatened after all. Mr. Neal has raised the
12 issue about a party being before the Grand Jury and not
13 being permitted to take the Fifth Amendment.

14 MR. HOOKER: We are not raising that.

15 MR. SCHIFFER: We refer to the Court in re Neff,
16 207 Fed. 2d 149 at 152.

17 THE COURT: All right, let's take a five minute
18 recess.

19 MR. NEAL: May it please the Court, may we have
20 an order to Mr. Schiffer and no defense counsel or the
21 government will bother this woman for the next five minutes?

22 MR. SCHIFFER: May I say, Your Honor, we don't
23 even know where she is. The government is keeping her in
24 seclusion so they know we can't get to her.

25 THE COURT: No one will consult with her during

1 this recess and the officers, the marshal will see that that
2 order of the Court is carried out.

3 (Thereupon, at 10:15 a. m., Court was in recess.)

4 (After recess, Court was in session.)

5 THE COURT: Does this pertain to the matter
6 presently before the Court, Mr. Branstetter?

7 MR. BRANSTETTER: It pertains to the matter before
8 the Court.

9 MR. NEAL: Your Honor, I don't see what position
10 defense counsel have in something like this that is a matter
11 between the government witness and the Court? How do defense
12 counsel come in here on this?

13 MR. BRANSTETTER: Could I suggest to the Court
14 why? May it please the Court, there have been statements,
15 charges and counter charges of interfering with the
16 administration of justice. Now I would like the record to be
17 clear and I want to use this as an example simply because of
18 the statement of the government counsel this morning. The
19 government counsel this morning furnished us with the
20 Jencks statements of another witness by the name of Williams.
21 Now, I want to read to the Court from that so as this record
22 may be clear as to who is doing what.

23 THE COURT: Well, now, gentlemen, let's don't--

24 MR. BRANSTETTER: (Interposing) It relates to
25 this specific matter and it is very short.

1 THE COURT: All right.

2 MR. BRANSTETTER: And I would respectfully
3 request in the statement of Ernestine Lee Williams she says
4 this. She stated that the main reason for her not getting in
5 touch with the Louisville office following her contact with
6 Bramwell was that she was irked with Mr. Durkin for the way
7 he talked to her in her home previous to the Louisville visit.
8 She stated that Mr. Durkin had scared her when he implied
9 that the safety of her children, her safety, might be in
10 danger as a result of her testimony and the implication that
11 she might be eventually have to move from Louisville. Now
12 as to who is talking to witnesses and doing things to
13 witnesses I don't think these statements should be fired back
14 and forth.

15 THE COURT: Mr. Branstetter, now that has
16 absolutely nothing to do with this witness. If you wish to
17 take it up in regard to another witness, we will take it up
18 at that time. But let's do not bring up matters that have
19 no application to the matter that is before the Court. At
20 this time the Court will allow this witness to be examined
21 in the absence of the jury first by the government with regard
22 and only with regard to any privilege or claimed privilege
23 or with regard to any improper prosecutorial action that would
24 involve her taking the stand. Let's have her brought in.

25 MR. NEAL: May I have another opportunity? I'm

1 not sure I understand exactly what we are questioning about?

2 THE COURT: As to whether she is claiming any
3 privilege about testifying or not testifying.

4 (Thereupon, the witness, Mattie Mix, called at
5 the instance of the United States Government, was brought
6 into the courtroom and the following proceedings were had
7 to-wit:)

8 THE CLERK: Do you--

9 THE WITNESS: I have a lawyer here. Mr. Schiffer.
10 And I have already gave him,--

11 THE COURT: Well, just--

12 THE WITNESS: (Interposing) Gave him a letter.

13 THE COURT: Do you have any religious objections
14 to being sworn?

15 THE WITNESS: Sir?

16 THE COURT: Do you have any religious objection
17 to being sworn?

18 THE WITNESS: No.

19 THE COURT: All right, hold up your hand and be
20 sworn?

21 THE CLERK: Do you solemnly swear that the
22 testimony you give in this case will be the truth, whole
23 truth, and nothing but the truth, so help you God?

24 THE COURT: Do you? Just a moment. Have the
25 witness repeat the oath.

1 THE CLERK: Will you repeat after me and hold up
2 your right hand. I solemnly swear--

3 THE WITNESS: I solemnly swear--

4 THE CLERK: That the evidence I will give in this
5 case--

6 THE WITNESS: The evidence I give in this case--

7 THE CLERK: Will be the truth, the whole truth,
8 nothing but the truth?

9 THE WITNESS: Will be the truth, whole truth,
10 nothing else but the truth.

11 THE CLERK: So help me God?

12 THE WITNESS: So help me God.

13 THE COURT: All right.

14 MATTIE MIX,

15 a witness called at the instance of the United States of
16 America, being first duly sworn, was examined and testified
17 as follows:

18 DIRECT EXAMINATION

19 BY MR. NEAL:

20

21

22

23

24

25

Tk 11
EW 1

Mix - Direct

1894

- 1 Q Mrs. Mix, Mr. Schiffer your lawyer?
- 2 A That's right.
- 3 Q Mr. Jacques Schiffer over here?
- 4 A That's right.
- 5 Q When did he become your lawyer?
- 6 A When did he become my lawyer?
- 7 Q Yes.
- 8 A Well, since I--I was subpoenaed to come up.
- 9 Q Since you were subpoenaed?
- 10 A I didn't know I had to have any.
- 11 Q Since you were subpoenaed to come down here?
- 12 A I didn't know I had to have no lawyer until I
- 13 got ready to come up here, so that's why.
- 14 Q Did you go to see Mr. Schiffer or did he come
- 15 to see you?
- 16 A I went to see him.
- 17 Q How did you happen to go see Mr. Schiffer?
- 18 A How did I happen to go? Because I had read
- 19 about him before.
- 20 Q Read about him?
- 21 A Uh-huh.
- 22 Q Because he is--
- 23 A (Interposing) Being a lawyer.
- 24 Q Pardon me. You had a lawyer in Nashville, I
- 25 believe, didn't you?

1 A Mr. Osborn.

2 Q Mr. Osborn?

3 A Uh-huh.

4 Q Didn't you have a lawyer before you had either

5 Mr. Osborn or Mr. Schiffer, Mr. Hudgins?

6 A What?

7 Q Mr. Hudgins?

8 A That's right, uh-huh.

9 Q How did you happen to leave Mr. Hudgins and go

10 to Mr. Osborn and Mr. Schiffer?

11 A Well, I didn't need a lawyer.

12 Q You didn't? You don't think you have anything--

13 strike that--you brought a letter to me the other day, didn't

14 you?

15 A I sure did, yes, sir.

16 Q Did Mr. Schiffer--I believe he dictated that

17 letter and you signed it?

18 A I signed the letter.

19 Q He gave you the letter?

20 A Yes.

21 Q Pardon me?

22 A Yeah.

23 Q Now, you told me and Mr. Hooker and Mr. Reddy

24 and me, I believe this morning, that you had nothing to

25 worry about these telephone calls that we were going to

1 question you about and that you had been told by them, I
2 think you stated, that we would try to embarrass you about
3 past events, isn't that correct?

4 A That's right.

5 Q Do you have any objection to testifying this
6 morning if we don't try to embarrass you about past events
7 or anything like that?

8 A Well, I would rather take the Fifth, I don't know
9 what you all going to say to me.

10 Q Well, have you committed any offense?

11 MR. SCHIFFER: Objected to.

12 MR. SILETS: Objected to, your Honor.

13 THE COURT: Sustain the objection.

14 BY MR. NEAL:

15 Q Mrs. Mix, you testified before the grand jury
16 in Nashville.

17 MR. BRANSTETTER: May it please the Court.

18 MR. SCHIFFER: Same objection.

19 MR. BRANSTETTER: Could I inquire as a matter of
20 administration of justice myself? This witness has said
21 that she wanted to take the Fifth. I would assume she knows
22 what she means. Now, any question I think the Court has a
23 positive duty to instruct this witness at this time that any
24 questions she may answer may lead to an opening or a waiver
25 of that right which she has now asserted and any further

1 question by this government attorney, knowing the rules of
2 law dealing with this particular subject is not appropriate.

3 MR. NEAL: Your Honor, I am absolutely amazed
4 that defense counsel here are trying to prevent the testimony
5 in this case whereby one counsel gives a witness a letter,
6 dictates a letter to a witness and gives it to her for her
7 to sign. This is unbelievable.

8 MR. SCHIFFER: It's not unbelievable, your Honor.
9 I am her counsel and I acted in the course of what she
10 instructed me she wanted to do and, Mr. Neal, you just ain't
11 big enough to stop her.

12 MR. NEAL: May it please the Court, Mr. Schiffer
13 is counsel for a defendant and counsel for a government
14 witness at the same time?

15 MR. SCHIFFER: Yes, yes. Is it unheard of?
16 This is my client. Now, if your Honor please, do you want
17 to cut this proceeding short?

18 THE COURT: Just a moment now, gentlemen, just
19 a moment. The Court does not care to hear arguments in the
20 presence of this witness. Mrs. Mix, you are not required to
21 testify about any matters that would or might--testify
22 against yourself as to any matters that would or might
23 incriminate yourself. You are required, however, to testify
24 about any matters of which you have knowledge, however,
25 which would not incriminate yourself.

1 Proceed with your examination.

2 BY MR. NEAL:

3 Q Mrs. Mix, did you ever make or receive any tele-
4 phone calls from your house?

5 MR. SCHIFFER: Objected to, your Honor. Objected
6 to, your Honor, on the ground that we are here for one purpose,
7 as to whether this party wants to take her protection under
8 the Fifth Amendment and ask to whether she understands that
9 and whether she desires to do so.

10 Mr. Neal is now going into the very matter he
11 wants to explore on direct testimony before the jury.

12 Now, to save the time of the Court, may I inquire--

13 THE COURT: (Interposing) Mr. Schiffer, I do
14 not want to hear argument in the presence of the witness.
15 Overrule the objection.

16 MR. SCHIFFER: May I make this suggestion then
17 to save the time of the Court, I think it will enlighten
18 the Court of the whole situation.

19 THE COURT: Yes.

20 MR. SCHIFFER: If I could address two or three
21 questions to the witness you will see the entire picture
22 factually.

23 THE COURT: No, sir.

24 MR. SCHIFFER: All right, sir.

25 BY MR. NEAL:

1 Q Mrs. Mix, the Judge says you may answer. Did
2 you make or receive any call?

3 MR. SCHIFFER: Objected to.

4 THE COURT: Just a moment. Overruled.

5 MR. SCHIFFER: Then, your Honor, at this time
6 I ask that the witness be instructed as to her rights under
7 the Fifth Amendment of the United States not to incriminate
8 herself or be a witness against herself as to every question
9 put to her by Mr. Neal because I have been the attorney
10 consulting with this witness. She has made disclosures to
11 me last year, your Honor, in this very matter.

12 THE COURT: Mr. Schiffer, I do not want to hear
13 argument in front of the witness.

14 MR. SCHIFFER: May we exclude the witness?

15 THE COURT: Mr. Schiffer, will you abide by the
16 instructions of the Court?

17 MR. SCHIFFER: May I ask your Honor--of course,
18 I will, your Honor.

19 THE COURT: All right.

20 MR. SCHIFFER: May I ask your Honor every time
21 Mr. Neal asks a question that then I ask the Court and
22 request the Court to make that instruction and inquiry of
23 the witness for her own protection?

24 THE COURT: Well, Mrs. Mix, as the Court has
25 instructed you, you are not required to answer any question

1 which may tend to incriminate you yourself, you are required
2 to answer any question, however, that would not tend to
3 incriminate yourself, even though it might implicate some
4 other person or party and you are not permitted to claim
5 the privilege of any constitutional amendment from testifying
6 that would not tend to incriminate yourself but only those
7 questions which would tend to incriminate yourself are you
8 entitled to claim that privilege. Do you understand?

9 THE WITNESS: I think any--

10 THE COURT: Do you understand my instruction?
11 Would you answer me? Do you understand my instruction?

12 THE WITNESS: I think so.

13 BY MR. NEAL:

14 Q Mrs. Mix, you didn't make or receive any tele-
15 phone calls from Louisville, Kentucky, in your home in
16 October, November and December of 1962, did you, and you
17 know nothing about them?

18 A No.

19 Q Isn't that true?

20 A Yes.

21 Q All right. And isn't it true, Mrs. Mix, that
22 the only people who have access to your telephone are your-
23 self, or who did have access during this period of time,
24 are yourself--

25 MR. SCHIFFER: Objected to as leading, your Honor.

1 Q Mattie Harris.

2 THE COURT: Overruled.

3 Q And the Defendant Tom Parks?

4 A No, they ain't the only ones that used--I told
5 you several people used my phone.

6 Q You don't think those questions I have just--
7 pardon me, what did you say?

8 A I said several people used my phone, not just
9 those two two.

10 Q Those three?

11 A More than those.

12 Q Who are the others?

13 A I told you the milkman and different people.

14 Q Well, do they--

15 A (Interposing) They--

16 Q (Interposing) Who else?

17 A I said different people off the street, I couldn't--

18 Q (Interposing) But they don't make or receive
19 long distance telephone calls, do they?

20 A Haven't anybody received any that I knows any-
21 thing about, I don't know nothing about a long distance call.

22 Q Right. Now, you don't permit the milkman or
23 people off the street--

24 MR. BRANSTETTER: (Interposing) Now, may it
25 please the Court, I don't think he has a right to cross-examine

1 this witness and certainly if he is going to use some sort
2 of grand jury transcript of her testimony we would like to
3 have a look at it.

4 MR. NEAL: I am not using grand jury--

5 THE COURT: (Interposing) Overruled.

6 MR. BRANSTETTER: May it please the Court, for
7 the record I don't think I have ever seen this person before
8 that is now on the stand, I don't recall ever having seen
9 this person. I know I have never talked to her but when
10 government counsel is seeking in this method to cross-examine
11 his own witness with matters that may or may not affect my
12 client--

13 THE COURT: (Interposing) Well, overruled.

14 MR. BRANSTETTER: Then I will make the appro-
15 priate objection.

16 THE COURT: Overrule the objection at this time.

17 BY MR. NEAL:

18 Q Now, these people, the milkmen and so forth, do
19 not make long distance telephone calls?

20 A I don't know anybody made any.

21 Q Right. But, now, you didn't make or receive any,
22 you said. Now, did at one time did Mister--the defendant,
23 Thomas Ewing Parks, tell you that he had made a call to
24 Louisville, something about his relatives, on your phone?

25 A I don't know, I don't remember whether he did,

1 whether he told me that or not, I am not sure.

2 Q Pardon me?

3 A I am not sure.

4 Q You don't remember?

5 A (Witness moves head from side to side.)

6 Q Well, to refresh your recollection, you testified
7 before the grand jury in Nashville.

8 MR. BRANSTETTER: Now, may it please the Court,
9 we are objecting to the use of grand jury minutes.

10 THE COURT: Overrule the objection.

11 BY MR. NEAL:

12 Q You testified before the grand jury in Nashville,
13 isn't that correct?

14 A I did.

15 Q And you remember, Mrs. Mix, how carefully I
16 warned you of your rights, you know I spent some time
17 warning you of your rights?

18 MR. SCHIFFER: At this point, your Honor, may
19 I ask the Court to appoint an attorney of the local bar for
20 this witness and that her rights are protected. I don't
21 think she understands the instruction of what the Court
22 tried to explain to her and this I know from my own experi-
23 ence that she is not too well acquainted with court language
24 and for that reason I think for her own purposes and for her
25 own protection that the Court should, I believe, appoint a

1 local member of the bar to consult with her and that she
2 understands what the direction of the Court has been to each
3 question, of course.

4 MR. NEAL: May I continue, your Honor?

5 THE COURT: Yes, I will consider that request.
6 You may continue.

7 MR. NEAL: May I continue now, your Honor?

8 THE COURT: Yes, sir.

9 BY MR. NEAL:

10 Q Mrs. Mix, you remember when you testified before
11 the grand jury?

12 THE COURT: Have Mr. Jere Tipton called and see
13 if he can come to the courtroom, or if not, have Mr. Raymond
14 Witt called and come to the courtroom.

15 BY MR. NEAL:

16 Q Do you remember, Mrs. Mix, when you testified
17 before the grand jury in Nashville?

18 A Yeah, I do.

19 Q And you--

20 MR. SCHIFFER: (Interposing) At this point,
21 your Honor, before the examination continues, may we see
22 the grand jury minutes so I could follow this and understand
23 precisely what counsel refers to, the entire testimony of
24 this witness before the grand jury?

25 MR. NEAL: May it please the Court, if I could

1 complete my examination.

2 THE COURT: Overrule the objection.

3 BY MR. NEAL:

4 Q Do you remember now when you testified I was
5 there, I believe, wasn't I, Mrs. Mix?

6 A You was.

7 Q And I believe I warned you very carefully and
8 fairly of your rights, didn't I?

9 A Yes.

10 Q And I believe at that time I told you what it was
11 all about and you said you had nothing to be--nothing to hide,
12 is that correct?

13 A Yes.

14 Q And that was true, wasn't it?

15 A Why, sure, I don't know nothing.

16 Q That's right. Now, didn't you say in that grand
17 jury testimony, Page 28:

18 "Question. On your bill have you noticed there
19 were calls, long distance calls, to Louisville, Kentucky?

20 "Answer. There hasn't been but one long distance
21 call on my telephone bill, hasn't been but one on there.

22 "Question. Where was it to?

23 "Answer. Louisville.

24 "Did you make it?

25 "I didn't make it.

1 "Question. Did you pay for it?

2 "No, I haven't paid it yet, I paid part of it
3 but not all of it."

4 MR. SCHIFFER: At this point, your Honor, before
5 counsel proceeds any further, either with the grand jury
6 testimony, I believe for the protection of this witness she
7 should first be consulted with her local counsel and I ask
8 the Court the appointment of counsel with criminal law
9 experience.

10 MR. NEAL: May I continue?

11 THE COURT: All right.

12 MR. SCHIFFER: Do I understand now the government
13 is giving this witness immunity?

14 MR. NEAL: I will be glad to give this witness
15 immunity. There is nothing this witness could be prosecuted
16 for in a million years.

17 MR. SCHIFFER: That is only a statement made by
18 the prosecutor, your Honor, and the Courts have held that is
19 no binding agreement on the part of the government or a
20 stipulation.

21 I ask your Honor, in fairness to this witness,
22 that a local counsel with criminal law experience be per-
23 mitted to consult with this lady before she proceeds further
24 in this examination.

25 MR. NEAL: I just have one or two more questions,

1 your Honor.

2 A I didn't say that.

3 MR. SCHIFFER: Not even one more question.

4 A I didn't say that.

5 THE COURT: Overruled.

6 BY MR. NEAL:

7 Q Now, then you said, "What are you going to do
8 about"--you were asked, "What are you going to do about the
9 phone call to Louisville?"

10 And you said, "I am going to have to pay it."

11 "Question. Did you make it?

12 "Answer. No. He asked me, Thomas said he made
13 it and I told him yes.

14 "Question. Thomas said he made it?

15 "Yes, he called his cousin.

16 "What was said?

17 "He had some people, some people die up there
18 or something.

19 "Question. Did you ask Thomas if he made the
20 call to Louisville?

21 "People were out there. I asked him and he said
22 he might have made the call."

23 Now, that was the truth when you testified before
24 the grand jury, wasn't it?

25 A Some of that you said now I didn't say that.

1 Q Oh, you didn't?

2 A No, I didn't say all of what you said. I dis-
3 remember now what you were saying, but I didn't say nothing
4 about I had paid the telephone bill.

5 Q I see, but Thomas Parks did say he made the call
6 to Louisville?

7 A I can't say.

8 MR. SCHIFFER: Just a minute, please. Objection.
9 If there is any question in this witness' mind that the Grand
10 Jury minutes which the prosecution is attempting or purporting
11 to read from are in conflict with her present recollection,
12 your Honor, I demand for this particular witness that she be
13 permitted at this time, she is under oath now, be permitted
14 to consult with her counsel with a great deal of criminal
15 legal experience. It is very obvious what the government is
16 now doing. She is now in conflict and she says that the Grand
17 Jury minutes are not correct as to her present recollection.

18 BY MR. NEAL:

19 Q Mrs. Mix, all I want to ask you is this.

20 MR. BRANSTETTER: May it please the Court, did
21 the witness state that the Grand Jury minutes read to you are
22 in conflict with your knowledge?

23 MR. SCHIFFER: Present recollection.

24 MR. BRANSTETTER: Present recollection.

25 THE COURT: Just a moment. Just a moment. Gentle-

1 men, we will have one person at a time examine the witness.

2 MR. BRANSTETTER: Could we have the question and
3 answer read back to the answer of the witness? The reporter
4 read it back?

5 BY MR. NEAL:

6 Q Mrs. Mix --

7 THE COURT: (Interposing) One moment. Have the
8 reporter read it back.

9 (Thereupon, the Reporter read back as follows:)

10 "Question: Oh, you didn't?

11 "Answer: No, I didn't say all of what you said.
12 I disremember now what you were saying, but I didn't say
13 nothing about I had paid the telephone bill.

14 "Question: I see, but Thomas Parks did say he
15 made the call to Louisville?

16 "Answer: I can't say."

17 BY MR. NEAL:

18 Q Mrs. Mix, I think you understood my question.
19 I didn't say that you said you paid it. You misunderstood me.
20 But let me ask you this question, Mrs. Mix, and the Grand
21 Jury minutes so show, you didn't say that you had paid it.
22 Mrs. Mix --

23 MR. BRANSTETTER: (Interposing) May it please the
24 Court, I don't know what counsel is doing.

25 MR. NEAL: Your Honor, this is outrageous that Mr.

1 Branstetter is trying to keep testimony from coming in this
2 record.

3 MR. BRANSTETTER: I'm trying to keep incompetent
4 testimony out of this record, Mr. Neal.

5 THE COURT: Well, the jury is not present, gentle-
6 men. Overrule the objection. Proceed with your examination.

Tk 12 End
12A fls
Tk 12A

7 BY MR. NEAL:

8 Q Mrs. Mix, on that telephone call that was on your
9 bill to Louisville, did Thomas Parks tell you he made it and
10 he would pay it?

11 A No, he did not.

12 Q He did not tell you that?

13 A No.

14 Q Did he tell you he might have made it?

15 A I don't remember.

16 MR. SCHIFFER: Objected to, your Honor.

17 THE WITNESS: I don't remember.

18 MR. SCHIFFER: Mr. Neal has the Grand Jury
19 testimony before him. And now he is playing with the witness,
20 trying to get all kinds of answers to the same question.

21 THE COURT: Overrule the objection.

22 BY MR. NEAL:

23 Q Pardon me? All I asked you was did Thomas Parks
24 tell you or Thomas Parks tell you that he made the call to
25 Louisville to some sick cousin about some sick cousin?

1 A That is what I say, I don't remember.

2 MR. SCHIFFER: Objection.

3 THE COURT: Overruled.

4 BY MR. NEAL:

5 Q But you didn't make the call, though?

6 A No.

7 Q And you have no personal knowledge of the call?

8 A No.

9 Q And you have no personal knowledge of any calls
10 from your place to Louisville?

11 A No.

12 Q And you have nothing to hide with respect to these
13 calls, have you?

14 A No.

15 THE COURT: All right.

16 MR. SCHIFFER: At this point, your Honor, I wish
17 to enter an entire objection to all the proceedings in this
18 courtroom today concerning Mrs. Mix and making her a witness,
19 forcing her to take the oath under the direction of the Court,
20 and at the insistence of the --

21 THE COURT: (Interposing) Mr. Schiffer, do you
22 have any authority that a witness can refuse to take an oath?

23 MR. SCHIFFER: Not that a witness can refuse to
24 take an oath.

25 THE COURT: Why do you state that as an objection?

1 MR. SCHIFFER: I state this as the objection that
2 the government insisted on this procedure and persuaded the
3 Court to administer the oath to the witness. Now we know that
4 witnesses must take the oath under the direction of the Court
5 and this witness certainly does not mean to be contemptuous
6 of the Court.

7 However, the other issues are the civil rights
8 issues of any American citizen or being forced to testify
9 when they put the government on notice that they are seeking
10 the protection of the constitutional rights as of that moment.

11 THE COURT: Just a moment. Have the witness step
12 out just a moment.

13 (Instructions of the Court were followed.)

14 MR. SCHIFFER: What I want to get on the record
15 and your Honor prohibited me from putting it on the record
16 and your Honor called it the inopportune time, that is about
17 a year ago, ten or twelve months ago, that this witness came
18 to me in Nashville and related to me that the government had
19 been very unkind with her. They had come into her home and
20 accused her of perjury. And I take perjury to be a crime in
21 Chattanooga as well as Tennessee. And at the moment she told
22 me I put the question to her again, they said you were lying.
23 She said yes. And that is what this FBI man said. And I
24 told her that then and there, look, you are the witness, you
25 are the party involved. I explained to her what the Fifth

1 Amendment was.

2 That nobody can tell a witness what or what not
3 to do with the Fifth Amendment except explain what the law
4 is. And then if the witness so chose to protect herself, she
5 had that absolute right and no court could even take it away
6 from her.

7 What I see here, what I see here occurring without
8 the advice of counsel, the government is permitted to put her
9 on the stand and ask the very questions which he wanted to
10 ask of her in the first place instead of inquiring whether or
11 not she had a right under the circumstances to take the Fifth.

12 I say that that kind of procedure is violative
13 of every concept of what the Fifth Amendment stands for.

14 He has converted it in this small degree to a
15 star chamber proceeding questioning of a person who is an
16 American citizen and I want to take my rights under the Fifth
17 Amendment. And this person is told, first you testify and
18 then you will see a lawyer. Well, isn't that putting the
19 cart before the horse, your Honor?

20 THE COURT: Again, Mr. Schiffer, do you have any
21 authority for the position you have taken?

22 MR. SCHIFFER: Well, we will submit the Constitu-
23 tion of the United States. It is just an American citizen.
24 She has put the government on notice by letter what her
25 position would be. The government, nevertheless, calls her

1 and she is forced to testify to the very matters which she
2 says will incriminate her without the advice of counsel.

3 THE COURT: All right. Is there anything further
4 with respect to this matter?

5 MR. BRANSTETTER: May it please the Court, since
6 I have some little familiarity with the case and since this
7 testimony is sought I think possibly to be introduced in part
8 as against my client, I think that any further questioning of
9 this witness would, by any counsel, would do nothing except
10 place her in a position of possibly being pursued for perjury.

11 Now, the question of the method of administering
12 the oath was different to other witnesses so far. Other
13 witnesses have not been required to repeat after the Clerk.

14 THE COURT: Yes, this witness made no response
15 that the Court could determine when the oath was administered.
16 She made absolutely no response. She had originally refused
17 to even raise her right hand. The Court felt under those
18 circumstances that there should be no question in the record
19 about the administration of the oath. All right, is there
20 anything further?

21 Mr. Witt, you are a member of this Bar and the
22 Court has asked that you come this morning to advise and
23 counsel with the witness who was just on the witness stand,
24 Mrs. Mattie Mix, with reference to her right or privilege to
25 refuse to testify as to any matters of which might incriminate

1 herself. The Court has heretofore instructed her that she
2 has no obligation to testify as to any matters that might
3 tend to incriminate herself. But that she does have the
4 obligation to testify with regard to any matters in her
5 knowledge which would not tend to incriminate herself.

6 If you will, please, consult with Mrs. Mix and
7 likewise advise her with regard to her rights in that
8 respect and advise the Court, please, of your action in that
9 matter.

10 MR. SILETS: Your Honor, I would like to be
11 heard before this gentleman leaves. With all due respect
12 to my learned counsel and to the Court, I think the Court
13 should first call the witness in and advise her that the
14 Court is appointing a counsel and she need not accept him as
15 her counsel if this is her desire. She has the right to
16 choose any counsel. If she persists in her desire to have
17 Mr. Schiffer that is her freedom of choice.

18 Secondly, with all due respect to my brother at
19 the Bar, I would like for him to state for the record what
20 his experience is, whether he can in fact counsel her adequately
21 ly as to her rights under the Constitution. I think we are
22 entitled to know that as well.

23 THE COURT: All right, Mr. Witt, state what
24 your qualifications are as an attorney and your familiarity,
25 if any, with the Constitution of the United States.

12A End
12B fls
Tk 12B

1 (Thereupon, Mr. Witt came to the bar and the
2 following proceedings were had, to-wit:)

3 MR. WITT: I do not believe that at the moment
4 without any study upon my part and not knowing anything of
5 the facts that I could walk into the next room and advise her
6 with competency with regard to her rights under the Fifth
7 Amendment. I would not want to do this until after I had
8 heard from her if she is willing to accept me as her client,
9 I mean, as her attorney. After I have heard the facts, then
10 I would like to research the point myself because I have not
11 had a Fifth Amendment question in my experience.

12 THE COURT: All right.

13 MR. NEAL: May it please the Court, may the
14 government suggest that this is truly a matter, it seems to
15 me, for the Court to decide and the Court has heard her that
16 this lady has no desire to take any Fifth Amendment. She has
17 no desire to do anything but come in here and testify truth-
18 fully. This has all been put up to her. It is just so plain,
19 your Honor.

20 The Court should call her in and tell her that
21 she has to testify. It takes five minutes for this witness'
22 testimony and we can move on. This is a matter for the Court
23 to decide.

24 MR. BRANSTETTER: May I inquire, may it please
25 the Court, government counsel did make a part of the record

1 the letter?

2 THE COURT: The letter is for identification
3 purposes only as far as the Court is aware.

4 MR. BRANSTETTER: He asked the witness about it
5 and we would like now to ask that it be made a part of the
6 record.

7 THE COURT: It can be introduced only by stipula-
8 tion of the parties as a part of the record.

9 MR. BRANSTETTER: We would like to have the
10 witness called in and asked if she wrote such a letter.

11 MR. HOOKER: It can be introduced by the witness
12 when she is called in the regular course to testify.

13 THE COURT: It can be introduced in the regular
14 matter, not by just tendering it.

15 MR. BRANSTETTER: We want to recall the witness
16 and ask her to identify and file it.

17 THE COURT: All right.

18 MR. NEAL: We will stipulate we received this
19 letter from her. She said that Mr. Schiffer dictated it and
20 gave it to her and she signed it.

21 THE COURT: All right, introduced by stipulation.
22 What exhibit number will it be? Exhibit No. 5. May the
23 Court see the letter?

24 (The letter referred to above was marked Exhibit
25 No. 5, Defendant Campbell, and received in
evidence.)

1 THE COURT: All right. Let's again take just a
2 brief recess.

3 MR. NEAL: May it please the Court, we have a
4 memorandum on this point we would like to submit to the
5 Court.

6 THE COURT: All right. Not more than five minutes
7 (Thereupon, a recess was had.)

8 MR. SCHIFFER: May I address the Court please on
9 this point?

10 THE COURT: All right.

11 MR. SCHIFFER: May I on this point, Your Honor,
12 refer the Court to one of my own cases in the Sixth Circuit
13 decided last year entitled "In re Atterbury (spelling)
14 A-T-T-E-R-B-U-R-Y", decided on April 18, 1963, 316 Fed. 2d 106,
15 which in turn for this circuit collates all of the authorities
16 on this matter of the Fifth Amendment and makes specific
17 reference in that decision to Hoffman against the United
18 States, 341 U. S. 479 and 71 Supreme Court Reporter 814.

19 Now, with reference to this particular witness,
20 Your Honor, I should like to put into evidence, because we
21 have reached a very serious stage in this proceeding that
22 involves this witness, I want an opportunity to place in
23 evidence the fact that this woman lacks any education to speak
24 of and from my prior conferences with her I am convinced
25 that she, with her intelligence level and lack of education,

1 does not fully comprehend what the Court itself has tried to
2 make this witness understand about the Fifth Amendment or
3 what self-incrimination means.

4 THE COURT: What possibly could there be self-
5 incriminating about the testimony that she has been inquired
6 of, Mr. Schiffer?

7 MR. SCHIFFER: She has indicated to me in the past
8 and, of course, I will have to put this on the record, the
9 fact that she has been accused, that with reference to the
10 answers she makes to this very inquiry today, to these very
11 questions, she was accused by a member of the FBI, a special
12 agent in Nashville who came to her home and asked her these
13 questions, who said she is lying, she is committing perjury.

14 THE COURT: You know as a lawyer that she wasn't
15 committing perjury, do you not?

16 MR. SCHIFFER: I am saying this, whether or not
17 she was committing perjury, what I know about it is
18 confidential between my client and myself, Your Honor.

19 THE COURT: Well, isn't it a matter of law, the
20 fact that a witness talks to anyone and either tells the
21 truth or doesn't tell the truth, could that possibly be
22 perjury?

23 MR. SCHIFFER: It's not entirely true as a legal
24 proposition in this sense, Your Honor, if this witness in
25 truth were approached in this very matter and asked these

1 very questions and she made these very responses then that
2 becomes a part of an FBI report or remains in the memory and
3 recollection of this witness that if she has been told by
4 this representative of the government, "what you have said is
5 a lie and it's perjurious and you are going to go to jail and
6 I am telling you you are going to go to jail and we are
7 going to put you in jail if this is what your testimony is."

8 And she said, "Well, I will take a lie detector
9 test."

10 And they say to her, "Well, you can't take a lie
11 detector test because we are telling you right now you are
12 lying."

13 Now, then in view of that context, Your Honor,
14 this woman then should be permitted to take her protection
15 under the Fifth Amendment because a member of the government--

13a

16 THE COURT: Again, Mr. Schiffer, let's come back
17 to the issue. She said that she did not place certain
18 telephone calls. Now, where is there any incrimination?

19 MR. SCHIFFER: That's for the witness.

20 THE COURT: Or self-incrimination?

21 MR. SCHIFFER: That's for the witness.

22 THE COURT: No, it's not for the witness, it's
23 not for the witness, Mr. Schiffer. You know the law doesn't
24 provide that. If so any witness could refuse to answer any
25 question at any times and courts could not function.

1 MR. SCHIFFER: As a pure statement of principle
2 Your Honor, I certainly agree with Your Honor as far as you
3 have gone, but we have gone an additional step. She has been
4 told by the very people who are operating with the prosecution
5 representing the prosecution that if she gives those answers
6 then they are false and they are perjurious, she will go to
7 jail. She has been told that and warned about that.

8 Now, since we have no immunity statute what is
9 there to prevent a prosecution later on in another juris-
10 diction for these very same answers elicited here? They
11 cannot give her immunity. She has been on notice she is
12 going to jail if she testifies this way here.

13 Well, doesn't Your Honor believe that under those
14 circumstances with a person of limited intelligence and
15 limited education certainly, and I want to continue, it's
16 my honest belief, having conferred with this client last year
17 about this matter, that she is of very limited education,
18 does not understand fully what Your Honor has attempted to
19 explain to this woman is her legal position and the terms
20 under which she could seek to protect herself, not protect
21 anybody else.

22 Since the threat has been made to her I believe,
23 Your Honor, in all fairness with this witness, she certainly
24 has a right to not to incriminate herself because she has
25 been told already that these very answers are lies and will

1 be considered perjury and she will go to jail if she says
2 that in this court.

3 Under those circumstances, Your Honor, the
4 government has committed itself to this witness and she has
5 a right to protect herself as a citizen.

6 THE COURT: All right.

7 MR. SILETS: Your Honor, may I be heard, Your
8 Honor?

9 THE COURT: All right, Mr. Silets.

10 MR. SILETS: Your Honor, I have had the privilege
11 of arguing this issue before other jurisdictions and the
12 issue is what must be shown by an individual who seeks to
13 take the privilege of the Fifth Amendment.

14 Now, the outstanding case on this proposition
15 is Hoffman versus United States, 341 U. S. 488.

16 Now, I'd like to quote to the Court from Page
17 486, "To sustain the privilege it need only be evident from
18 the implication of the question in the setting in which it
19 is asked that a responsive answer to the question, or an
20 explanation of why it cannot be answered, might be dangerous
21 because injurious disclosure would result. The trial judge,
22 in apprising the claim, must be governed as much by his
23 personal perception of the peculiarities of the case as by
24 the facts actually in evidence."

25 Now, Your Honor, if this were to come up, for

1 example, when Mrs. Mix went before the Grand Jury and claimed
2 her privilege and the government took the position that it
3 was improperly claimed and she came before the Court for a
4 citation of contempt for failure to answer the question and
5 her counsel came before the Court and if I were her counsel
6 at this point and making the argument I think we have an
7 analogous situation and I, as her counsel, or whoever would
8 be appointed to represent her, need only point out to the
9 Court in what circumstances it may be in fact prejudicial
10 to her or injurious.

11 Now, let's take this situation. She has made a
12 statement to a federal officer. Now, the Court is aware that
13 under Title 18, United States Code, Section 1001, the Congress
14 has enacted a federal false statement crime. It is a crime
15 to make a false statement to a federal officer. The Court
16 knows that it is a crime to make a false statement under
17 oath.

18 If, for example, assuming for the purpose of
19 this discussion arguendo this woman testified falsely before
20 the Grand Jury and she is called before this quorum, a
21 separate and distinct quorum, put under oath and asked
22 precisely the same questions and if she feels obliged to
23 tell the truth now, assuming she did not before, then she
24 would have proven against her the crime of perjury.

En
Tk 13

Tk 14
ollows

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1 Or if she made a false statement to a federal
2 officer, a member of the Federal Bureau of Investigation, and
3 now being placed under oath and asked precisely the same
4 questions.

5 If she were now to testify truthfully she could
6 conceivably be convicted of the crime of making a false state-
7 ment. Under the authority of United States vs. Hoffman, that
8 is all the Court has to be aware of is a clear showing of the
9 possibility of her being incriminated. To ask her how would
10 you be incriminated, would get to the very vice that the
11 Constitutional Amendment attempts to preclude.

12 Now, your Honor, I also cite to the Court the
13 case of United States vs. Coffey (spelling) C-o-f-f-e-y,
14 Third Circuit Hayes. It was a situation of argument of
15 counsel such as I am making now. Now, if the--

16 THE COURT: What is the citation on that case?

17 MR. SILETS: I can get it for your Honor in a
18 moment.

19 MR. HAGGERTY: We have it right here.

20 MR. SILETS: 198 Fed. 2d 438.

21 THE COURT: All right.

22 MR. SILETS: Your Honor, I want to point out to
23 the Court now that this is a very vital issue to this woman,
24 I don't represent her.

25 MR. NEAL: Your Honor, does he have any right to

1 stand up here and take up the Court's time with all this?

2 If he doesn't represent her he has no interest in this
3 matter.

4 MR. SILETS: I have an interest in this because
5 the government wants to put this proof in against Dorfman,
6 what is Dorfman doing here, this woman is testifying against
7 Parks, it is his own fault. He joined these defendants to-
8 gether. He put the counts together. Now he has to sleep in
9 the bed that he made.

10 THE COURT: All right. Well, all right, let's
11 proceed with the trial of the case, gentlemen. Overrule
12 the objections. Bring the jury in. And bring the witness
13 back to the witness stand.

14 MR. BRANSTETTER: May it please the Court--

15 (Thereupon, the witness returned to the witness
16 chair and the following proceedings were had, to-wit:)

17 MR. BRANSTETTER: I would like to make one very
18 short statement to the Court outside of the presence of the
19 witness. I think it reflects upon her.

20 THE COURT: All right, step out again.

21 (Thereupon, the witness was excluded from the
22 courtroom.)

23 THE COURT: Now, gentlemen, I don't mind counsel,
24 as a matter of fact, I appreciate counsel giving any advice
25 or any suggestions or any motions or any other statements of

1 the law to the Court that can be helpful to the trial of this
2 case. But we are not going to tolerate delay deliberately
3 for the sake of delay and it appears to the Court that some
4 of the matters this morning have been for the sake of delay.
5 The Court may have been mistaken in that respect. If I am,
6 I apologize for having made the statement.

7 But let's proceed with the trial of this case.
8 If you have a statement that is meritorious and you feel
9 something that should be called to the Court's attention I
10 would appreciate your doing so.

11 MR. BRANSTETTER: May it please the Court, I
12 would represent to the Court now that I will not in this
13 proceeding in any manner seek delay for the purpose of delay.
14 This Court and this is the statement I sought to make prior
15 to the Court, I don't think the Court heard me, before asking
16 the jury to return.

17 This Court has instructed this jury quite
18 extensively on conspiracy and on agency. The government is
19 seeking and has sought to pull itself up by its own boot-
20 straps on those two points. If this witness is a co-conspirator
21 or it develops from any of the proof or an agent in the
22 criminal law sense, then that very fact alone would incrimi-
23 nate this witness and be detrimental to my client. I
24 respectfully except to the ruling of the Court.

25 THE COURT: All right, sir. Have the witness

1 returned to the stand.

2 (Thereupon, the witness, Mrs. Mattie Mix, having
3 previously been called by the United States of America, and
4 having previously been duly sworn, thereupon returned to the
5 witness stand.)

6 (Thereupon, the jury of 12 and 4 alternates were
7 brought into the courtroom and the following proceedings were
8 had, to-wit:)

9 FURTHER DIRECT EXAMINATION

10 BY MR. NEAL:

11 Q You are Mrs. Mattie Mix?

12 A I am.

13 Q I beg your pardon?

14 A I am.

15 Q Mrs. Mix, you will have to speak up and talk to
16 the jury so we can all hear you, please.

17 A Yes.

18 Q Where do you reside, Mrs. Mix?

19 A Where do I live? Nashville.

20 Q Yes, ma'am.

21 A Nashville.

22 Q What is the street number?

23 A 3203 Indiana.

24 Q 3203 Indiana Avenue?

25 A That's right.

1 Q Now, did you reside there, Mrs. Mix, in October,
2 November, and December of 1962?

3 A I did.

4 Q What is your phone number there, Mrs. Mix?

5 A CYpress 1-8644.

6 Q CYpress 1-8644.

7 A Right.

8 Q Now, Mrs. Mix, did you make or receive any long
9 distance calls from Louisville, Kentucky, either make any
10 calls on your phone, on your home phone, CYpress 1-8644, to
11 Louisville, Kentucky, in October, November, and December,
12 1962, to your knowledge?

13 MR. SCHIFFER: Objected to, your Honor. The
14 question is too broad, too wide open and there is nothing
15 which ties this particular question down to a particular
16 phone call and if it is tied down to a particular phone call
17 we would like the party to whom she spoke.

18 THE COURT: All right, overrule your objection.

19 BY MR. NEAL:

20 Q I asked you to your knowledge did you make any
21 telephone call from your phone, CYpress 1-8644 in Nashville,
22 Tennessee, to Louisville, Kentucky, during the months of
23 October, November and December, 1962?

24 A No.

25 Q You did not?

1 A No.

2 Q Is that right?

3 A Right.

4 Q Now, to your knowledge, Mrs. Mix, did you receive

5 any telephone calls from Louisville, Kentucky, to your home

6 phone in Nashville during the months of October, November and

7 December, 1962? That were coming to you?

8 A Not that I know of.

9 Q Not that you know of?

10 A No. No. I wasn't home if I did.

11 Q Now, Mrs. Mix, who has access to your telephone?

12 Who did have access in October, November and December, 1962?

13 A What do you mean, from friends?

14 Q Yes, the three of you, who could use it?

15 MR. SCHIFFER: Objected to, your Honor.

16 MR. BRANSTETTER: May it please the Court, she

17 didn't say three. She said friends.

18 BY MR. NEAL:

19 Q I beg your pardon. Strike that. I thought you

20 said three. Did you say the three of us?

21 A No. No. I said friends.

22 Q Will you tell us who they were in October,

23 November and December, 1962?

24 A Well, I couldn't call all the people's name that

25 used my phone during that time.

1 Q Well, try.

2 A They ain't no way in the world for me to call all
3 those people.

4 Q Did Mrs. Madie Harris?

5 MR. BRANSTETTER: We object to his leading the
6 witness, if the Court please.

7 MR. NEAL: Her memory apparently needs refreshing.

8 THE COURT: Overrule the objection in view of her
9 response.

10 BY MR. NEAL:

11 Q Did Mrs. Madie Harris use your phone?

12 A She did.

13 Q During this period of time, I'm talking about
14 October, November and December, 1962.

15 A Well, some time in 1962. I don't know exactly
16 the dates and months like you do.

17 Q I mean during these months it was available for
18 her to use. Is that correct?

19 A Yes.

20 Q And was available to the defendant, Thomas Ewing
21 Parks, to use?

22 MR. BRANSTETTER: May it please the Court, it is
23 still leading. Quite so.

24 THE COURT: Overrule the objection.

25 THE WITNESS: You said was it available for him

1 to use?

2 BY MR. NEAL:

3 Q Yes.

4 A Well, it was available for him to use if he had
5 wanted to use it but I'm not sure he used it.

6 Q You are not sure whether he did or not?

7 A No, I am not.

8 Q During those months of October, November and
9 December, 1962, Mr. Mix took his meals at your--Mr. Parks
10 took his meals at your place morning and evening?

11 A He did.

12 Q He did?

13 A Yes, sir.

14 Q Pardon me?

15 A Yes.

16 Q Daily?

17 A Yes.

18 Q Now, in addition to you, Mrs. Madie Harris and
19 the Defendant Thomas Ewing Parks, by the way, do you recognize
20 the defendant, Thomas Ewing Parks, in the courtroom?

21 A Do I?

22 Q Yes.

23 A Sure.

24 Q Could you point him out?

25 A He was sitting over there.

14 - 9 • Mix - Direct

1932

1 Q This man who was scratching the side of his head?

2 A Yes.

3 Q Sitting right over here?

4 A Yes.

5 Q Now, these other people you were talking about
6 using the phone, they didn't make or receive long distance
7 calls?

8 A Haven't nobody made any long distance calls that
9 I knows of. I don't know of no long distance calls, not only
10 the one I made to Chicago to my children, but I don't know.

End Tk 14 11
Tk 15 fls.

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1 Q I see, to your knowledge?

2 A I don't know nothing about --

3 MR. BRANSTETTER: (Interposing) May it please
4 the Court, let her answer, he's interrupting.

5 Q Pardon me?

6 A I don't know anything about anybody making any
7 long-distance calls on my phone.

8 Q You don't know anything?

9 A And nobody receiving any.

10 Q But the three of you that I mentioned had access
11 to your phone, is that right?

12 A More than those three you mentioned had access to
13 my phone. The milkman and --

14 Q (Interposing) The milkman and the mailman?

15 A Different people passed me.

16 Q Pardon me?

17 A There's different people passed there and used
18 the phone, there's plenty of people used my phone.

19 Q During this period of time Mr. Parks had a key to
20 your house, did he not?

21 A He had a key to the house?

22 Q Yes.

23 A I think so.

24 MR. NEAL: Excuse me just a moment.

25 BY MR. NEAL:

1 Q Now, Mrs. Mix, there was a telephone call to
2 Louisville, Kentucky --

3 MR. BRANSTETTER: (Interposing) Now, may it
4 please the Court, he has no right just to start telling this
5 witness something and then saying, "Isn't that so?"

6 THE COURT: Sustain the objection.

7 BY MR. NEAL:

8 Q Mrs. Mix, was there a telephone call to Louisville,
9 Kentucky, on your bill in November 1962?

10 A It wasn't when you all came out there and asked
11 me about it, it wasn't out, I hadn't got a bill with a
12 Louisville long-distance call, I had never gotten the bill.
13 Mr. Sheets and them was out there and he said I was telling
14 a damn lie, I had paid it and I hadn't.

15 Q Now, you did sometime in November, you received
16 a bill covering the month of October for your phone?

17 A Sometime down in that month.

18 Q Yes. Yes, I understand. And on that bill cover-
19 ing the month of October 1962, there was a call to Louisville,
20 Kentucky, from your home phone, isn't that correct?

21 A Yeah.

22 Q Okay. Now, isn't it true that the Defendant
23 Thomas Parks told you he made that call?

24 A I couldn't --

25 MR. SCHIFFER: (Interposing) Object.

1 A I couldn't tell, Thomas haven't told me.

2 THE COURT: Overruled.

3 A That he used the phone to make that call. Mr.
4 Sheets and them is the ones that told me he did, but he
5 ain't told me nothing.

6 Q Now, Mrs. Mix, you testified before the Grand Jury,
7 did you not, in January?

8 MR. BRANSTETTER: Now, may it please the Court --

9 THE MARSHAL: (Interposing) Have order in
10 court, please.

11 MR. BRANSTETTER: We thought we had an under-
12 standing that counsel would not start reading from some Grand
13 Jury minutes here or something trying to impeach a witness,
14 his own witness.

15 MR. HOOKER: Not trying to impeach her, trying
16 to refresh her recollection.

17 MR. NEAL: All I want to do is refresh her
18 recollection, your Honor. I am entitled to do that.

19 MR. BRANSTETTER: She has said specifically that
20 she has a recollection and that Mr. Parks did not tell her
21 anything about it and it was Mr. Sheets that told her, your
22 man.

23 THE COURT: Sustain the objection.

24 MR. NEAL: Well, then, may I not refresh her
25 recollection from the Grand Jury testimony, your Honor?

1 THE COURT: You may refresh her recollection
2 to the extent that she does not have a recollection of these
3 matters, yes.

4 BY MR. NEAL:

5 Q Mrs. Mix, you testified before the Grand Jury in
6 1963?

7 MR. SCHIFFER: Objection.

8 Q In respect to this matter?

9 MR. SCHIFFER: Pardon me. Objected to, your
10 Honor, for this reason, he is not attempting to refresh her
11 recollection. He asked the witness a question and she
12 answered him. She hasn't failed in recollection. She did
13 give him an answer. Now, let's hear the next question without
14 reference to the Grand Jury minutes.

15 BY MR. NEAL:

16 Q Mrs. Mix --

17 THE COURT: (Interposing) Overrule the objection.

18 Q You testified before the Grand Jury, did you not,
19 with respect to this matter?

20 A What part of it, I don't know what part.

21 Q I mean about the part about this call, you
22 testified before the Grand Jury on January 22nd, 1963, did
23 you not?

24 A That I didn't know anything about the calls at
25 all.

End 15
15A fls

1 Q Did you testify before the Grand Jury?

2 A Yeah.

3 Q All right. Now, will you listen very carefully?

4 Were you asked the following question and did you give the
5 following answer --

6 MR. BRANSTETTER: (Interposing) Of course, for
7 the record we must have an objection.

8 THE COURT: Sustain the objection.

9 MR. NEAL: Your Honor, this is the way I propose
10 to refresh the witness' recollection with respect to this
11 matter or to impeach her statement here that Parks didn't tell
12 her this.

13 THE COURT: The Court understands the law that
14 Grand Jury minutes could not be used for the purpose of
15 impeaching the witness, it can be used for the purpose of
16 refreshing her recollection and that only.

17 BY MR. NEAL:

18 Q Mrs. Mix, could I show you your Grand Jury
19 testimony and ask you if that refreshes your recollection and
20 I will ask that this be marked merely for identification as
21 Government's Exhibit 6.

22 MR. SCHIFFER: Objected to, your Honor.

23 MR. BRANSTETTER: She has not indicated that she
24 has exhausted her recollection. Counsel has not pleaded
25 surprise, the two prime requisites before there can be

1 refreshing of recollection and counsel knows that as a
2 matter of law.

3 THE COURT: Sustain the objection.

4 MR. NEAL: May it please the Court, may we
5 respectfully turn the Court's attention to a memorandum we
6 respectfully submitted with respect to the use of Grand Jury
7 testimony to impeach?

8 THE COURT: Gentlemen, the Court has read the
9 memorandum and the Court has indicated, as the Court under-
10 stands the law in that respect, that those minutes may be
11 used for the purpose of refreshing the witness' recollection
12 where accommodation is made for that purpose, but the Grand
13 Jury minutes may not be used for the purpose of impeaching
14 a witness or attempting to show that she testified differently
15 before the Grand Jury.

16 MR. NEAL: I respect the Court's ruling and I
17 will tender the witness for cross examination.

18 MR. BRANSTETTER: We reserve any cross examina-
19 tion.

20 THE COURT: All right, Mrs. Mix. Now, do not
21 talk to anyone about your testimony in this case or permit
22 anyone to talk to you about your testimony.

23 MR. SCHIFFER: Your Honor.

24 THE COURT: And remain available.

25 MR. SCHIFFER: May I ask one question before the

1 refreshing of recollection and counsel knows that as a
2 matter of law.

3 THE COURT: Sustain the objection.

4 MR. NEAL: May it please the Court, may we
5 respectfully turn the Court's attention to a memorandum we
6 respectfully submitted with respect to the use of Grand Jury
7 testimony to impeach?

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10 stands the law in that respect, that those minutes may be
11 used for the purpose of refreshing the witness' recollection
12 where accommodation is made for that purpose, but the Grand
13 Jury minutes may not be used for the purpose of impeaching
14 a witness or attempting to show that she testified differently
15 before the Grand Jury.

16 MR. NEAL: I respect the Court's ruling and I
17 will tender the witness for cross examination.

18 MR. BRANSTETTER: We reserve any cross examina-
19 tion.

20 THE COURT: All right, Mrs. Mix. Now, do not
21 talk to anyone about your testimony in this case or permit
22 anyone to talk to you about your testimony.

23 MR. SCHIFFER: Your Honor.

24 THE COURT: And remain available.

25 MR. SCHIFFER: May I ask one question before the

1 witness is excused?

2 THE COURT: All right, Mr. Schiffer.

3 CROSS EXAMINATION

4 BY MR. SCHIFFER:

5 Q With reference to the residence which you main-
6 tained and which you have described the way you live, do you
7 maintain a rooming house there?

8 A Pardon, what did you say?

9 Q Do you maintain a rooming house?

10 A That's right.

11 MR. SCHIFFER: Thank you.

12 REDIRECT EXAMINATION

13 BY MR. NEAL:

14 Q And who resided at your rooming house in October
15 and November and December, 1962?

16 A Who desired?

17 Q Yes, who resided?

18 THE COURT: Who lived there?

19 A Oh, a lady, students from the school, from A&I
20 State College, but that is all.

21 Q Now, Mrs. Mix, an A&I student, Mrs. Mix?

22 A Yes, a student from the school, that's all that
23 lived there. Don't nobody else live there, nothing but
24 students.

25 Q When did the students from A&I live there?

- 1 A Oh, I don't remember, I'd have to check.
- 2 Q Pardon me?
- 3 A I'd have to check and see, I don't remember.
- 4 Q Isn't it true, Mrs. Mix, that they left in early
- 5 October, 1962?
- 6 A October?
- 7 Q Of 1962. Now, think carefully.
- 8 A I disremember, I have to go back.
- 9 Q Let me refresh your recollection. You were inter-
- 10 viewed on December 12th, 1962, by Special Agents Francis
- 11 Norwood and William L. Sheets, isn't that correct?
- 12 A Yes.
- 13 Q Pardon?
- 14 A Umm.
- 15 Q And isn't it true that, Mrs. Mix, that you told --
- 16 MR. BRANSTETTER: (Interposing) May it please
- 17 the Court, is he impeaching his witness or is he refreshing
- 18 this witness' recollection?
- 19 MR. NEAL: To refresh her recollection, she has
- 20 said she didn't recollect.
- 21 THE COURT: Overrule the objection.
- 22 BY MR. NEAL:
- 23 Q "She said now," speaking of you, Mrs. Mix --
- 24 MR. BRANSTETTER: (Interposing) Could I respect-
- 25 fully request that the appropriate rule be followed and that

1 counsel hand it to the witness and let her look at it rather
2 than read something to the jury here and see if that refreshes
3 her recollection?

4 MR. NEAL: That is no more appropriate rule than
5 what I am doing.

6 THE COURT: Overrule the objection.

7 MR. NEAL: I wish counsel would let us examine
8 the witness, these constant interruptions.

9 THE COURT: That's all right, proceed, Mr. Neal.

10 BY MR. NEAL:

11 Q Now, Mrs. Mix, to refresh your recollection,
12 didn't you state that to these two agents, "No one has spent
13 the night at her home except herself from early October,
14 1962, when two young college students ceased," that is,
15 stopped?

16 A Yes.

17 Q "Renting a home in her residence to the date of
18 this interview." Didn't you make that statement?

19 A Yes, I did.

20 Q Wasn't that statement true when it was made?

21 A Yes.

22 Q And isn't it true today?

23 A Yeah, that's true, wasn't nobody there at that
24 time.

25 Q Pardon me?

1 A Wasn't nobody there at that time. You see, after
2 that, you know --

3 Q (Interposing) I am talking --

4 A (Interposing) I still have some there now.

5 Q I am talking about the months of October, November,
6 and December, 1962, I don't mean today.

7 A Umm.

8 Q The students had left in early October?

9 A They had, but, you see, some come in after that,
10 that's what.

11 Q But not --

12 A (Interposing) Not then.

13 Q Not during the months of October, November, and
14 December, 1962?

15 A Not December, it wasn't in October when Mr. Sheets
16 and them first come to my home, there wasn't any there then
17 but in November I had two.

18 Q Well, let me read this, Mrs. Mix, to refresh your
19 recollection. "She said," that is you, Mrs. Mix, "No one
20 has spent the night at her home except herself from early
21 October, 1962, when two young college students ceased,"
22 stopped, "renting a room in her residence to the date of this
23 interview."

24 Now, the date of this interview was December 12th,
25 1962?

1 A That was the first interview?

2 Q Yes, ma'am, that was in December of '62. So,
3 from early October until December 12th of '62, no one was
4 spending the night with you?

5 A Well, I don't remember.

6 Q Well, does that refresh your recollection?

7 A I think -- I don't know, I just don't remember.

8 Q Pardon me?

9 A I don't remember.

10 Q Well, do you remember making that statement?

11 You made that statement, didn't you?

12 A Yeah, to him, the first interview, but, you see,
13 they was out more than any once.

14 Q Well, it was true when it was made, wasn't it?

15 A The first one?

16 Q And it's true today? Pardon me?

17 A The first, in the first interview?

18 Q Yes.

19 THE COURT: All right. If nothing further of
20 this witness, you may be excused.

21 MR. NEAL: May I ask one question, your Honor?

22 MR. BRANSTETTER: Then, may it please the Court,
23 I believe counsel was reading from something that would
24 properly fall within the category of the Jencks Act and he
25 has not given it to us.

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THE COURT: All right.

MR. BRANSTETTER: We demand it at this time.

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MR. NEAL: Give you all the Jencks statements.

2

MR. BRANSTETTER: What are you reading from?

3

MR. NEAL: Jencks statements.

4

MR. HAGGERTY: Not the ones you gave us. Only

5

things we have are three very short paragraphs. We have

6

nothing such as you have been reading from.

7

THE COURT: All right.

8

MR. NEAL: I think I have, Your Honor. I think

9

they have found them.

10

THE COURT: Is there anything further?

11

MR. NEAL: Yes, I had one further question.

12

BY MR. NEAL:

13

Q Who paid the bill for the call to Louisville in

14

October, 1962?

15

A I paid my own bill.

16

Q Did Mr. Parks reimburse you?

17

A I said I paid my own bill.

18

Q Did he reimburse you?

19

A What do you mean?

20

Q Well, did he give you back the money for the call?

21

A He didn't have to give me no money to call. I

22

paid my own bill.

23

Q I know that, Mrs. Mix, but did he give you any

24

money for using your phone?

25

A No. No. I haven't received any money.

1 Q Pardon me.

2 A No, I haven't received any money.

3 Q You haven't received any money from Mr. Parks for
4 the telephone?

5 A No.

6 Q Pardon me?

7 A Nope.

8 MR. BRANSTETTER: We reserve cross examination.

9 THE COURT: All right. Mrs. Mix, you will
10 remain subject to recall. Do not discuss your testimony with
11 anyone. All right, you may be excused at this time.

12 (Witness excused.)

13 MRS. MADIE HARRIS,

14 a witness called at the instance of the United States of
15 America, having first been duly sworn, was examined and
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. NEAL:

19 Q I believe your name is Mrs. Madie Harris?

20 A Yes.

21 Q Mrs. Harris, would you try to speak up and talk
22 to the members of the jury, they are the ones who are
23 interested?

24 THE COURT: Mrs. Harris, speak out loudly so
25 everybody in the courtroom can hear you.

1 THE WITNESS: I will.

2 THE COURT: Speak out loudly so everybody in the
3 court can hear you please.

4 THE WITNESS: Yes, sir.

5 BY MR. NEAL:

6 Q Mrs. Harris, are you acquainted with Mrs. Mattie
7 Mix?

8 A I am.

9 Q And I believe you are a neighbor of hers at
10 3203 Indiana Avenue?

11 A Yes.

12 Q What is Mrs. Mix's phone number?

13 A CYpress 1-8644.

14 Q CYpress 1-8644?

15 A Yes.

16 Q Now, do you sometimes use the phone at the Mix
17 residence?

18 A I do.

19 Q And did you sometime during the months of October,
20 November and December, 1962?

21 A Yes.

22 Q Did you ever make or receive any long distance
23 telephone calls on that phone?

24 A No.

25 Q Pardon me?

1 A No.

2 Q Did you ever know of anyone else who made or
3 received any long distance telephone calls on that phone?

4 A No.

5 Q Have you ever been in that place when--, in that
6 residence when--

7 MR. BRANSTETTER: May it please the Court, he is
8 leading the witness.

9 THE COURT: Overrule the objection.

10 BY MR. NEAL:

11 Q Have you ever seen the defendant, Thomas Ewing
12 Parks?

13 A Yes.

14 Q Are you familiar with him?

15 A I know him.

16 Q What is his relationship to Mrs. Mix?

17 A Well, just as far as I know just a friend.

18 Q Pardon me?

19 A As far as I know, a friend.

20 Q As far as you know a friend, have you been in
21 Mrs. Mix's place when Mr. Parks was there?

22 A Well, yes, I have sometime.

23 Q Isn't he there frequently on a day to day basis
24 as a matter of fact or was there?

25 A I'm not over there every day so I couldn't give

1 that statement.

2 Q Does he take his meals there?

3 A Well, sometimes he do eat there.

4 Q You did not make or receive any telephone calls
5 over that phone, the Mix phone, in the months of October,
6 November and December, 1962?

7 A I have made calls but they were not no long
8 distance.

9 Q And you never received any long distance calls?

10 A No.

11 MR. NEAL: That is all the questions we have.

12 MR. BRANSTETTER: No questions, may it please
13 the Court.

14 THE COURT: All right. May this witness be excused?

15 MR. BRANSTETTER: As far as we are concerned.

16 MR. REDDY: She may be excused as far as we are
17 concerned.

18 THE COURT: You may be excused, Mrs. Harris.

19 (Thereupon, the witness was excused.)

20 MR. NEAL: May it please the Court, while he is
21 coming in--

22 (Thereupon, a witness was sworn by the clerk.)

23 MR. NEAL: It may be necessary for the government,
24 may it please the Court, to recall this witness at a later
25 date. We would like to have permission to do this.

1 THE COURT: The last witness?

2 MR. NEAL: No, this witness.

3 THE COURT: All right.

4 NILES KITCHEN,

5 a witness called at the instance of the United States of
6 America, having first been duly sworn, was examined and
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. NEAL:

10 Q Would you state your name, please?

11 A Niles Kitchen.

12 Q Where are you employed, Mr. Kitchen?

13 A Southern Bell Telephone and Telegraph Company in
14 Nashville.

15 Q How long have you been employed by that company?

16 A About nine years.

17 Q And are you the custodian of the records of
18 Southern Bell Telephone Company in Nashville?

19 A I am, sir.

20 THE COURT: How long have you held that position?

21 THE WITNESS: Held the position, sir, seventeen
22 months.

23 MR. NEAL: I ask that the reporter mark these
24 five documents consecutively as Government Exhibit No. 6--,
25 it might expedite things if the Court will permit me to move

1 toward the witness. I will try to keep my voice up.

2 THE COURT: All right.

3 MR. BRANSTETTER: May counsel see these documents,
4 may it please the Court?

5 MR. NEAL: Soon as I identify them I will show
6 them to you, Mr. Branstetter.

7 BY MR. NEAL:

8 Q Mr. Kitchen, I show you what has been marked for
9 identification as Government's Exhibits No. 6, No. 7, No. 8,
10 No. 9, No. 10, and No. 11 and ask you if you recognize those,
11 sir?

12 A Yes, sir.

13 Q Are those records of the Southern Bell Telephone
14 and Telegraph Company in Nashville, Tennessee?

15 A Yes, sir.

16 (Documents referred to above were marked for
17 identification as Govt. Exs. Nos. 6 through
11, inclusive.)

18 BY MR. NEAL:

19 Q And are they records of the company made and
20 kept in the regular course of business?

21 A Yes, sir, they are.

22 Q And it is the regular course of your business to
23 make and keep such records?

24 A Yes, sir, it is.

25 MR. NEAL: We offer Government Exhibits Nos. 6

1 through 11 into evidence and show them to defense counsel.

2 MR. SILETS: Your Honor, I would like to object
3 to the entry because Mr. Neal has not laid the proper
4 foundation under Title 28, Section 1732, the business records
5 act. If the Court will reflect upon that statute you will
6 see that the questions asked by Mr. Neal pertaining to these
7 records are not sufficient to bring them in under the
8 exception to the common law rule that a man must have first-
9 hand information concerning the records.

10 THE COURT: In what respect, Mr. Silets, do you
11 say that?

12 MR. SILETS: He said they were kept in the
13 ordinary course of business. He does not have any personal
14 knowledge as to how they were entered or that they were
15 entered under his supervision and control.

16 I would like to cite a case to the Court, if the
17 Court please, pardon me one moment.

18 MR. NEAL: May it please the Court, I asked him if
19 they were made in the regular course of business, if they
20 were kept in the regular course of business. This is
21 foolishness, may it please the Court.

22 MR. SILETS: United States versus Grayson, 166
23 Fed. 2d 863.

24 THE COURT: 863?

25 MR. SILETS: Yes, sir.

1 THE COURT: Do you say that the record does not
2 reflect first he kept them in the ordinary course of business?

3 MR. SILETS: He must be able to testify of his
4 own knowledge that they were entered, the entries made in
5 these records were made in the regular and ordinary course of
6 business. And he must do that of his own knowledge, either
7 under his supervision and control or by him directly and he
8 has testified to none of those things.

9 MR. NEAL: May it please the Court, he has testified
10 I believe you are custodian of the records?

11 THE WITNESS: Yes, sir.

12 BY MR. NEAL:

13 Q That these records were made in the regular course
14 of business?

15 A Yes, sir.

16 Q And that they were kept in the regular course of
17 business?

18 A Yes, sir.

19 Q And that is the regular course of business to make
20 and keep these records?

21 A Yes, sir.

22 Q And that the entries were made at or about the
23 time they were transcribed?

24 A Yes, sir.

BY THE COURT:

25 Q Just what are your duties, Mr. Kitchen?

1 A I am the unit manager in the business office,
2 sir, where we maintain all service records of all services
3 in the Nashville area, of which these records are a part.
4 Also we maintain all long distance toll tickets in our office.
5 We handle billing activities and service orders activities
6 with subscribers in our office.

7 Q These exhibits that you have identified, what are
8 they?

9 A These are records which we maintain in our office,
10 yes, sir. The service record cards I believe, service record
11 cards, toll tickets there and also credit cards.

12 MR. SILETS: Your Honor, if I may interject for
13 a moment, my understanding of the gentleman's testimony is
14 that he merely is a record-keeper. These records are under
15 his custody and as the custodian he is bringing them in.
16 There is no testimony that the persons making the entries on
17 the records have to report to him or that he has any know-
18 ledge of the entries on those records. There is nothing
19 to establish that these entries are correct when made.

20 MR. NEAL: May it please the Court, this is
21 taking the jury's time. Let me read this. All other
22 circumstances, making of such writings or records including
23 lack of personal knowledge by the enterer or which may be
24 shown to effect his business but such circumstances shall
25 not affect his credibility. It says any Court of the United

1 States and any court established by act of Congress, any
2 writing or record whether in the form of entry or book or
3 otherwise is a memorandum or record of any event, transcription,
4 occurrence or event shall be admissible of such transaction
5 event or made in the regular course of business to make such
6 memorandum or record at or about the time such transaction
7 or occurrence or event or within a reasonable time thereafter.

8 Now, I have read precisely the words and founda-
9 tion for admissibility. The witness so testified, Your
10 Honor. This is just pedagogy, and picayunish objection.

11 MR. SILETS: It is unfortunate, Your Honor, that
12 Mr. Neal should feel that the law is picayunish or pedagogy.
13 However, I'm sure the jury is and the court is interested
14 in the jury having only competent evidence. Now, if I may
15 read from the Grayson case.

16 The "as cited from the act, statute, the act,
17 transaction, occurrence or event" which the intransient
18 records must be of which either he has knowledge or which he
19 learns from a declarant who shall in the course of the business
20 transmit the information for inclusion in the memorandum.

21 He has no knowledge and he has not testified
22 that he has obtained the information that these entries were
23 correct when they were made. We are only interested in the
24 truth and if the truth is that they were correct when the
25 entries were made, then they fit within the statute.

16-12. Kitchen- Direct

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But the government has the obligation of fitting

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within the statute and they have not done so so far by this

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gentleman's testimony.

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1 MR.NEAL: Your Honor, we put them right in the
2 language of the act.

3 THE COURT: These records kept under your super-
4 vision?

5 THE WITNESS: My direct supervision, yes, sir.

6 THE COURT: All right. Overrule the objection.

7 MR. SILETS: Your Honor, may I just inquire?

8 THE COURT: Yes.

9 MR. SILETS: Was that answer to the question
10 were the entries made under his supervision or whether the
11 records are kept?

12 THE COURT: Well, were they made and kept under
13 your supervision?

14 THE WITNESS: Yes, sir.

15 MR. SILETS: The entries were made?

16 THE WITNESS: Those entries are made by machine,
17 sir, but this equipment is in our office and this is under
18 my direct supervision, yes, sir.

19 MR. BRANSTETTER: While counsel is looking at
20 those may I respectfully address the Court? A few days ago
21 I handed the Court an opinion from a circuit court in the
22 District of Columbia.

23 THE COURT: Yes, I read that.

24 MR. BRANSTETTER: That was the case of United
25 States vs. James J. Laughlin and the Court has it and we

1 would like to object to the introduction or receipt of these
2 records and evidence for the reasons stated in that case I
3 will not argue it unless the Court desires.

4 THE COURT: All right. Overrule the objection.

5 MR. BRANSTETTER: I then designate for the record
6 that the case is United States vs. James Laughlin (spelling)
7 L-a-u-g-h-l-i-n, Criminal No. 559-63, United States District
8 Court for the District of Columbia, decided January 22, 1964.

9 THE COURT: Is that '62 or '63?

10 MR. BRANSTETTER: It shows on here filed January
11 the 22nd, 1964, just a few days ago.

12 MR. REDDY: What are you referring to, Mr.
13 Branstetter?

14 MR. BRANSTETTER: I will furnish you a copy.

15 THE COURT: A copy has been furnished.

16 MR. BRANSTETTER: It's an opinion, official
17 opinion of an official Court. I am sure you have it.

18 MR. REDDY: Where would we get it from?

19 THE COURT: Let's proceed.

20 MR. NEAL: We offer the exhibits in evidence,
21 your Honor, 6, 7, 8, 9, 10 and 11.

22 THE COURT: Very well.

23 (The toll tickets previously marked Government
24 Exhibits No. 6, 7, 8, 9, 10 and 11, Witness
Kitchen, for identification were received in
evidence.)

25 BY MR. NEAL:

1 Q Mr. Kitchen, I show you what has been received
2 in evidence as Government's Exhibit No. 6 and ask you what
3 that is, sir?

4 MR. SILETS: Your Honor, may the jury be instructed
5 that these documents are not to be received in evidence against
6 Mr. Dorfman?

7 MR. NEAL: Your Honor, your Honor, that is not
8 entirely true.

9 THE COURT: The Court is unable to determine at
10 this time as to those matters. Any such motion as that will
11 have to be made after the Court--

12 MR. BRANSTETTER: (Interposing) Then we would,
13 in addition to the case cited, we would object on the basis
14 at this point in this proceeding that they are immaterial.

15 THE COURT: Well, overrule the objection.

16 BY MR. NEAL:

17 Q Would you tell us what that is, sir?

18 A Yes, sir, this is a mark sense toll ticket which
19 reflects a call placed to Louisville, Kentucky.

20 MR. HAGGERTY: We can't hear here. You are
21 talking rather rapidly. Would you keep your voice up, please?

22 THE WITNESS: Gladly, sir. This is a mark sense
23 toll ticket which reflects the call placed to Louisville,
24 Kentucky, on 10-21-62, October 21, 1962. The call was placed
25 from 291-8644 to 583-9385.

1 Q 291 is CYpress 1-8644?

2 A This is a Nashville exchange, yes, sir.

3 THE COURT: There seems to be some confusion by
4 the use of the word, I think you were using the word CY at
5 one time in there in calling off those numbers. Could you
6 restate that and make the record clear?

7 THE WITNESS: Do you want me to restate what I
8 said, your Honor?

9 THE COURT: Yes.

10 THE WITNESS: The call was placed to Louisville,
11 Kentucky, from 291 or CY 1-8644, the number called was 583-
12 9385.

13 BY MR. NEAL:

14 Q Would you tell us the time of day of that call,
15 sir, the exact time of day?

16 A Yes, sir, this was 10:34 p.m.

17 Q Central Standard Time?

18 A Yes, sir, Central Standard Time.

19 Q That was October 21, 1962, is that correct?

20 A Yes, sir.

21 Q And lasted four minutes and 27 seconds?

22 A Four minutes.

23 Q Thirty-seven seconds?

24 A Thirty-seven seconds.

25 Q Now, do you know the CYpress 1-8644 number there

1 to be the home phone number of Mrs. Mattie Mix?

2 MR. BRANSTETTER: May it please the Court, I
3 object, leading the witness.

4 THE COURT: Sustain the objection.

5 MR. NEAL: Well, it's a matter of record, your
6 Honor, I was just inquiring about it.

7 MR. SCHIFFER: We object to that kind of explana-
8 tion, your Honor. Now he is prefacing what he was told to
9 keep out.

10 MR. NEAL: Your Honor, it's a matter of record,
11 the two ladies just testified.

12 MR. SCHIFFER: If he has the record, let him
13 introduce the record.

14 THE COURT: Whatever the record reflects.

15 A The credit card--

16 MR. NEAL: It's in evidence.

17 BY MR. NEAL:

18 Q I show you what has been marked for identification
19 or what has been received in evidence as Government's Exhibit
20 No. 8 and 9 and ask you if you recognize those and, if you
21 could, tell us what they are, please?

22 A Yes, sir, this also is a mark sense toll ticket.

23 MR. SCHIFFER: Which one is he identifying?

24 MR. NEAL: No. 8.

25 THE COURT: What exhibit number are you looking

1 at now?

2 MR. NEAL: Pencil on the front.

3 THE WITNESS: This is No. 8, yes, sir.

4 BY MR. NEAL:

5 Q What is that?

6 A This is also a mark sense toll ticket on a call
7 placed to Nashville, Tennessee, on November 17, 1962. The
8 call was placed to 883-5859 and it was placed from 563-4526.

9 Q In what city?

10 A That's Woodbury, Tennessee.

11 Q A call from Woodbury, Tennessee, then to a number
12 in Nashville, 883-5859?

13 A Yes, sir.

14 Q On November the 17th, 1962?

15 A Yes, sir.

16 Q Would you give us the exact time of day of that
17 call, please?

18 A Let's see, that's approximately 6:44 p.m.

19 Q All right. Central Standard Time?

20 A Yes, sir.

21 Q Now, sir, from Government's Exhibit No. 9, can
22 you tell us--you said that call was made from Woodbury,
23 Tennessee?

24 A Yes, sir.

25 Q To Nashville, Tennessee, at No. 883-5859 in

1 at now?

2 MR. NEAL: Pencil on the front.

3 THE WITNESS: This is No. 8, yes, sir.

4 BY MR. NEAL:

5 Q What is that?

6 A This is also a mark sense toll ticket on a call
7 placed to Nashville, Tennessee, on November 17, 1962. The
8 call was placed to 883-5859 and it was placed from 563-4526.

9 Q In what city?

10 A That's Woodbury, Tennessee.

11 Q A call from Woodbury, Tennessee, then to a number
12 in Nashville, 883-5859?

13 A Yes, sir.

14 Q On November the 17th, 1962?

15 A Yes, sir.

16 Q Would you give us the exact time of day of that
17 call, please?

18 A Let's see, that's approximately 6:44 p.m.

19 Q All right. Central Standard Time?

20 A Yes, sir.

21 Q Now, sir, from Government's Exhibit No. 9, can
22 you tell us--you said that call was made from Woodbury,
23 Tennessee?

24 A Yes, sir.

25 Q To Nashville, Tennessee, at No. 883-5859 in

1 Nashville?

2 A Yes, sir.

3 Q Now, can you tell us who in Nashville at that
4 time had the No. 883-5859?

5 A This service is listed, our records indicate
6 that this service is listed in the name of Ewing King, 112
7 Benson Drive.

8 Q Thank you. Now, sir, I show you Government's
9 Exhibit--

10 MR. HAGGERTY: (Interposing) Pardon me. As a
11 matter of convenience to expedite things, could we have the
12 telephone number or the name of the telephone owner or
13 possessor in Woodbury?

14 THE COURT: Well.

15 MR. NEAL: This man would not be able to do it,
16 I am sure that--

17 THE COURT: (Interposing) Let's proceed.

18 MR. NEAL: We will have that later.

19 BY MR. NEAL:

20 Q I show you Government's Exhibits 10 and 11 and
21 ask you--

22 THE COURT: (Interposing) Take them one at a
23 time, if you can.

24 BY MR. NEAL:

25 Q Government's Exhibit No. 10 and ask you what that

1 is?

2 A This is a service record on the Sportsman Bar
3 at 1153 Broadway, Telephone No. AL 5-8245.

4 Q AL 5-8245?

5 THE COURT: Excuse me, Broadway where?

6 MR. NEAL: Sportsman's Bar in Nashville.

7 THE WITNESS: 1153 Broadway.

8 Q Nashville, Tennessee?

9 A Nashville, Tennessee, yes, sir.

10 Q Now, could you tell me whether that is the
11 Sportsman's Bar or Sportsman's Lounge in Nashville that had
12 that number in October and November of 1962?

13 A Yes, sir.

14 Q And what was the number again?

15 A AL 5-8245.

16 Q AL 5-8245?

17 A Yes, sir.

18 Q Is that 255 AL?

19 A 255 is AL 5, yes, sir.

20 Q All right, fine. Now, the next exhibit.

21 A This is the credit card.

22 THE COURT: Referring to Exhibit 11?

23 THE WITNESS: Yes, sir, it's marked 11.

24 MR. ALEXANDER: This last one is Exhibit 10,
25 the Sportsman's Bar?

1 is?

2 A This is a service record on the Sportsman Bar
3 at 1153 Broadway, Telephone No. AL 5-8245.

4 Q AL 5-8245?

5 THE COURT: Excuse me, Broadway where?

6 MR. NEAL: Sportsman's Bar in Nashville.

7 THE WITNESS: 1153 Broadway.

8 Q Nashville, Tennessee?

9 A Nashville, Tennessee, yes, sir.

10 Q Now, could you tell me whether that is the
11 Sportsman's Bar or Sportsman's Lounge in Nashville that had
12 that number in October and November of 1962?

13 A Yes, sir.

14 Q And what was the number again?

15 A AL 5-8245.

16 Q AL 5-8245?

17 A Yes, sir.

18 Q Is that 255 AL?

19 A 255 is AL 5, yes, sir.

20 Q All right, fine. Now, the next exhibit.

21 A This is the credit card.

22 THE COURT: Referring to Exhibit 11?

23 THE WITNESS: Yes, sir, it's marked 11.

24 MR. ALEXANDER: This last one is Exhibit 10,
25 the Sportsman's Bar?

1 THE WITNESS: Yes, sir.

2 A This is the credit card on the Dinkler-Andrew
3 Jackson Hotel.

4 Q That is the Andrew Jackson Hotel in Nashville?

5 A In Nashville, Tennessee.

6 Q What is the number shown on that?

7 A Telephone No. AL 5-2121 through 9.

8 Q Now, is that the number subscribed to by the
9 Andrew Jackson in October, November and December, 1962?

10 A This is correct, sir.

11 Q Now, Mr. Kitchen, what time zone is the central
12 and western part of Tennessee in?

13 A Central Standard Time.

14 Q Does that include Woodbury, Tennessee, in Nashville?

15 A Yes, sir.

16 Q And was that true for the full year of 1962, was
17 it?

18 A Yes, sir, to my knowledge, yes, sir.

19 Q Would you give us the duration on the call from
20 Woodbury to Nashville, please, use the exhibit number?

21 A Two minutes and 14 seconds.

22 MR. NEAL: You may examine him.

23 THE COURT: Do you desire to cross-examine the
24 witness?

25 MR. SILETS: Yes, sir.

1 THE COURT: If so, perhaps we--well, let's start
2 with the cross-examination.

3 MR. ALEXANDER: May I see the exhibits, please?

4 THE COURT: All right.

5 MR. BROWN: Your Honor, since we haven't been
6 furnished copies of these I wonder if we might at this time
7 adjourn and have the government furnish those copies to us
8 immediately?

9 THE COURT: Well, I am not aware of any rule
10 requiring anybody to furnish any copies.

11 MR. NEAL: Some of those have been furnished,
12 your Honor.

13 THE COURT: If you have copies available.

14 MR. NEAL: Some time ago.

15 THE COURT: All right. Ladies and gentlemen,
16 we will recess at this time for lunch. Observe the same
17 instructions the Court has heretofore given you. Do not
18 discuss the case among yourselves or allow anyone to talk
19 to you about the case. We will resume the trial at 1:30.

20 MR. SILETS: Your Honor, before the jury goes
21 to lunch, could the Court instruct the jury to disregard the
22 testimony of Mrs. Mix and Mrs. Harris as to the Defendant
23 Dorfman?

24 THE COURT: Well, the jury will observe the
25 instructions heretofore given in that respect.

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All right.

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(Thereupon, the jury of 12 and 4 alternates were

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excluded from the courtroom and the following proceedings

4

were had, to-wit:)

End Tk 17
Tk 18 fls.

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1 THE COURT: All right, now, in the absence of the
2 jury, are there any matters to be taken up at this time?

3 MR. HAGGERTY: There is a matter, your Honor,
4 but we had prepared it for your Honor, but you made a ruling
5 in reference to the admissibility of prior inconsistent
6 statements to rehabilitate a witness. It may arise again,
7 so I will file with your Honor a brief on that subject.

8 THE COURT: All right.

9 MR. HAGGERTY: I will serve Mr. Reddy a copy who
10 is always happy to get briefs.

11 MR. REDDY: Yes, sir, very happy.

12 MR. NEAL: We have given the Court cases on that
13 as of last night. It was obviated this morning by the
14 avenue opened up by Mr. Schiffer. Mr. Haggerty is right, it
15 may come up again.

16 THE COURT: All right, anything further?

17 MR. SILETS: You do have under advisement a
18 number of things relating to the privilege of Mrs. Mix, is
19 that correct? Together with the questioning?

20 THE COURT: I will study the record on that
21 during the noon hour and determine if there are any further
22 actions in the opinion of the Court that will be necessary and
23 appropriate.

24 MR. SILETS: I think your Honor also took under
25 advisement the right of the defense to cross examine?

THE COURT: Yes, sir, that's right. That is under advisement by the Court. All right, let's adjourn court until 1:30.

(Thereupon, at 12:03 o'clock, p.m., court was adjourned for the noon recess until 1:30 o'clock, p.m.)

End Tk 18
Pk 19 fls

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January 29, 1964

(Thereupon, pursuant to adjournment for the noon recess, Court was in session. The jury of 12 and four alternates being excluded from the courtroom and the following proceedings were had to-wit:)

THE COURT: All right. Gentlemen, are we ready to proceed with the cross examination of the witness, Mr. Kitchen?

MR. HOOKER: The government is, Your Honor.

THE COURT: All right. Have Mr. Kitchen return to the stand and have the jury come in.

(Thereupon, the jury of 12 and four alternates were brought into open court and the following proceedings were had to-wit:)

THE COURT: All right, you may commence cross examination.

NILES KITCHEN,
a witness called at the instance of the United States of America, having been previously duly sworn, was recalled and testified further as follows:

CROSS EXAMINATION

BY MR. BRANSTETTER:

Q Mr. Kitchen, would you state to the Court and jury whether or not the exhibits from which you were reading contained the name of the person either making the call or

1 receiving the call?

2 A No, sir. Could I look at them again? There are
3 not any names on the tickets, no, sir.

4 (The marshal handed the exhibits referred to
5 above to the witness.)

6 A The two calls in question do not reflect names,
7 no, sir.

8 Q And you do not know the person making the call nor
9 the person receiving the call and you have not testified to
10 that, have you?

11 A No, sir.

12 MR. BRANSTETTER: Thank you.

13 THE COURT: Any further cross examination?

14 MR. BROWN: If the Court please, on behalf of the
15 Defendant King we would like to reserve the right to cross
16 examine this witness if it becomes pertinent later on.

17 THE COURT: All right. Any redirect examination?
18 All right, sir, you may be excused at this time, Mr. Kitchen,
19 subject to recall.

20 THE WITNESS: Thank you, sir.

21 (The witness was excused.)

22 MR. NEAL: The government calls Mrs. Anna Brown.

23 MR. DALE: Raise your right hand, please. Do you
24 solemnly swear that the evidence that you will give in this
25 case will be the truth, the whole truth, and nothing but the

1 truth, so help you God?

2 MRS. BROWN: Yes.

3 MR. DALE: Have a seat.

4 MRS. ANNA BROWN.

5 a witness called at the instance of the United States of
6 America, being first duly sworn, was examined and testified
7 as follows:

8 THE COURT: Mrs. Brown, if you will, speak out
9 loudly where everyone in the courtroom can hear you.

10 DIRECT EXAMINATION

11 BY MR. NEAL:

12 Q Mrs. Brown, would you direct your remarks to the
13 jury, please? Your name is Mrs. Anna Brown?

14 A Yes, it is.

15 Q I believe your husband's name is Tilford.

16 A Yes, it is.

17 Q Tilford Brown. Where do you reside, Mrs. Brown?

18 A 1121 West Chestnut Street, Louisville, Kentucky.

19 Q Louisville, Kentucky?

20 A Yes.

21 Q How long have you resided there?

22 A Sixteen years.

23 Q Sixteen years?

24 MR. BROWN: May we have the witness speak up?

25 THE COURT: All right. Yes, speak out a little

19-4

Brown - Direct

1973

1 more loudly, if you can.

2 BY MR. NEAL:

3 Q What business are you in, Mrs. Brown?

4 A We operate a guest house which is similar to a
5 motel.

6 Q And the name of that guest house, please?

7 A Brown's Guest House.

8 Q Brown's Guest House?

9 A Yes.

10 Q Is that located in Louisville, Kentucky?

11 A Yes, it is.

12 Q And what is the address of the Brown's Guest
13 House?

14 A 1121 West Chestnut Street.

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oll.

1 Q Did you and your husband operate this during the
2 months of October, November, and December 1962?

3 A Yes, we did.

4 Q Mrs. Brown, are you acquainted with the defendant,
5 Larry Campbell?

6 A Yes, I am.

7 Q Would you point him out, ma'am?

8 A Mr. Campbell is sitting at the corner of the
9 table with --

10 Q (Interposing) Is this Mr. Campbell right here?

11 A Yes, it is.

12 MR. NEAL: May the record show that the witness
13 pointed out the Defendant Campbell.

14 Q (By Mr. Neal) When did you first meet Mr.
15 Campbell, Mrs. Brown?

16 A October of 1962, I think it was the 20th or
17 about that.

18 Q How did you happen to meet him, what was the
19 occasion of your meeting?

20 A He stopped at our guest house for lodging.

21 Q He became a guest there?

22 A Yes, he did.

23 Q Was he there more than once during the fall of
24 1962?

25 A Yes, several times.

1 Q Several times, well, for only a day or extended.

2 Or what?

3 A Several days at a time.

4 Q Now, do you keep records of the guests and the
5 length of their stay and so forth?

6 A Yes, each guest registers as in any other motel
7 or hotel.

8 Q And your records would show the name and the time
9 he checked in and the time he checked out on these particular
10 visits?

11 A Yes.

12 MR. NEAL: May it please the Court, may I have
13 permission, it might save time for me to walk here rather
14 than handing these to the marshal?

15 THE COURT: Yes, sir.

16 MR. NEAL: May the Court Reporter mark these
17 documents as Government's Exhibit No. 12, 13, 14, and 15.

18 (The documents referred to above were marked
19 for identification as Government Exhibits No.
12, No. 13, No. 14, and No. 15.)

20 BY MR. NEAL:

21 Q Mrs. Brown, I show you what has been marked as
22 Government Exhibits 12, 13, 14, and 15 for identification
23 and ask if you recognize those?

24 A Yes.

25 Q Would you tell the members of the jury and the

[Faint, illegible text, likely bleed-through from the reverse side of the page]



1 Court what they are, please?

2 A These are registrations for Mr. Campbell, giving
3 the room number, the time --

4 Q (Interposing) Well, now, we don't want the
5 substance of it, of what they are, they are not in evidence
6 yet, but just identify them as documents.

7 A They are records of our company.

8 Q Relating to the Defendant Larry Campbell?

9 A Relating to Mr. Campbell.

10 Q Were those records made in the regular course of
11 business?

12 A In the regular course of business, they were.

13 Q And was it the regular course of your business
14 to make these records?

15 A Yes, it was.

16 Q At or about the time of the events described
17 thereon?

18 A Yes, sir.

19 MR. NEAL: I hand Government's Exhibits No. 12,
20 13, 14, and 15 to the defendants. We offer Government's
21 Exhibits No. 12, 13, 14, and 15 into evidence.

22 THE COURT: All right.

23 BY MR. NEAL:

24 Q Now, Mrs. Brown --

25 MR. BRANSTETTER: (Interposing) May it please

1 the Court, we object to the admission at this time on the
2 basis that they are not material at this particular stage of
3 the proceedings. Counsel has not made them material.

4 MR. NEAL: May it please the Court, the Court
5 and jury will remember that the Defendant Parks said after he
6 made the approach to Fields that he had to call someone in
7 Louisville.

8 MR. BRANSTETTER: Now, may it please the Court,
9 is counsel going to argue in front of the jury now?

10 THE COURT: Overrule the objection. Let's
11 proceed.

End Tk 20
Tk 21 fls

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1 THE COURT: Overrule the objection. Let's proceed.

2 MR. SCHIFFER: May I object on the ground that
3 he has misquoted the record? He said Mr. Parks said.

4 THE COURT: Ladies and gentlemen, you will try
5 this case on the basis of the testimony of the witnesses, not
6 on the basis of the statements and argument of counsel.

7 MR. SCHIFFER: Your Honor, may I respectfully
8 object. Mr. Neal has misquoted the record in his question.
9 If it's re-read Your Honor will see the error.

10 THE COURT: Well, there is no question at this
11 time before the Court.

12 MR. SCHIFFER: He just asked the question which
13 has not yet been answered.

14 THE COURT: Well, re-state your question. The
15 Court did not hear it.

16 MR. NEAL: There is an objection made to the
17 exhibits as being immaterial. I tried to point out where
18 it was material.

19 THE COURT: Well, proceed with the examination of
20 the witness.

21 MR. SILETS: Your Honor, I would like to object
22 to the admission of the documents, 12 through 15, as they
23 do not apply to the Defendant Dorfman.

24 THE COURT: All right.

25 MR. NEAL: Exhibits received in evidence, Your Honor?

1 MR. HAGGERTY: Just a moment. May it please the
2 Court, I likewise desire to object because they do not apply
3 to the Defendant Hoffa and ask at this time an instruction
4 from the Court.

5 THE COURT: Ladies and gentlemen, you will observe
6 the same instructions that the Court has heretofore given to
7 you with regard to evidence in the case. Overruled. Proceed.

8 MR. NEAL: Do I understand then the documents
9 are in evidence?

10 THE COURT: Yes. (The guest record cards
(previously marked
(Govt. Exs. 12 thru 15,
(received in evidence.)

11 MR. NEAL: Thank you.

12 BY MR. NEAL:

13 Q Now, Mrs. Brown, those records show, do they not,
14 that the Defendant Campbell stayed at your place on the
15 first trip from October 20th to October 30th, 1962.

16 THE COURT: Of course, ladies and gentlemen, you will
17 not receive or consider this evidence with regard to any party
18 defendant that it does not relate to or there has not been
19 any proof to or it does not in some manner relate.

20 A Yes, he did stay there during that time.

21 Q I beg your pardon?

22 A Yes, he did stay here--, stay there during that
23 time.

24 Q From October 20th to October 30th, 1962?

25 A Yes.

1 MR. HAGGERTY: Just a moment. May it please the
2 Court, I likewise desire to object because they do not apply
3 to the Defendant Hoffa and ask at this time an instruction
4 from the Court.

5 THE COURT: Ladies and gentlemen, you will observe
6 the same instructions that the Court has heretofore given to
7 you with regard to evidence in the case. Overruled. Proceed.

8 MR. NEAL: Do I understand then the documents
9 are in evidence?

10 THE COURT: Yes.

(The guest record cards
(previously marked
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11 MR. NEAL: Thank you.

12 BY MR. NEAL:

13 Q Now, Mrs. Brown, those records show, do they not,
14 that the Defendant Campbell stayed at your place on the
15 first trip from October 20th to October 30th, 1962.

16 THE COURT: Of course, ladies and gentlemen, you will
17 not receive or consider this evidence with regard to any party
18 defendant that it does not relate to or there has not been
19 any proof to or it does not in some manner relate.

20 A Yes, he did stay there during that time.

21 Q I beg your pardon?

22 A Yes, he did stay here--, stay there during that
23 time.

24 Q From October 20th to October 30th, 1962?

25 A Yes.

1 Q Now, to expedite matters, do those records show
2 that he has stayed there from November 3 to November 7, 1962
3 on the second trip?

4 A Yes, he did.

5 Q And do the records show that he stayed there
6 from November 10th, 1962, until November 16th, 1962?

7 A Yes, ne did.

8 THE COURT: What was the date?

9 Q What do those records show?

10 THE COURT: What was the date of the first?

11 Excuse me.

12 BY MR. NEAL:

13 Q What was the date of the first one, Mrs. Brown?

14 A October 20th to October 30th.

15 Q Now, the second was November 3 to November 7,
16 1962, and the third was November 10th to November 16th, 1962,
17 is that correct?

18 A That is correct.

19 Q And, now, the fourth trip was from what date to
20 what date, ma'am?

21 A November 20th to November 28th.

22 Q 1962?

23 A 1962.

24 Q Now, Mrs. Brown, do you have a pay phone in the
25 lobby of your motel?

1 A Yes, we do.

2 Q And did you have at the time during the period of
3 October, November and December, 1962?

4 A Yes, we did have.

5 Q And would you give us the number of that telephone
6 during that period of time in 1962? That is the only period
7 we are interested in.

8 A JU 3-9385.

9 Q JU 3-9385?

10 A Yes.

11 Q And is that also 583-9385, isn't it?

12 A Yes.

13 Q 583-9385?

14 A Right.

15 Q Now, while Mr. Brown or Mr. Campbell, excuse me,
16 the Defendant Campbell, was staying at your guest house
17 would you state whether or not he sometimes received calls
18 on this pay phone?

19 MR. BRANSTETTER: May it please the Court, I would
20 respectfully suggest that counsel representing Campbell not
21 be required to object so much to leading questions. Mr.
22 Neal knows what is leading and what is not and it's not fair
23 for me to have to every moment jump up and make an objection.
24 It doesn't appear good and counsel does it knowing that that
25 is necessary to be done.

1 MR. NEAL: Your Honor, this is an intelligent
2 woman. I can't put words in her mouth.

3 THE COURT: Overrule the objection.

4 MR. SCHIFFER: May I object, Your Honor, to the
5 remark made by Mr. Neal. This is not a question of the
6 intelligence of a witness. If Mr. Neal is trying to prejudice
7 the jury by these remarks, that is what I object to.

8 THE COURT: Overrule the objection. Proceed.

9 BY MR. NEAL:

10 Q Do you have my question in mind, Mrs. Brown?

11 A Would you mind repeating it?

12 Q I said, would you state whether or not during
13 the period of time Mr. Campbell stayed at your place did he
14 receive telephone calls over the pay phone in your lobby?

15 A Yes, occasionally.

16 Q Now, did Mr. Campbell ever make any statement to
17 you while he was there about Nashville, and if so, what
18 statement?

19 A He once said he might go to Nashville. If so, he
20 would return over the week end.

21 Q He might go to Nashville and if so he would
22 return to your place?

23 A Yes.

24 Q Did he say--, did he give any reason why he
25 might go to Nashville?

1 MR. BRANSTETTER: Now, may it please the Court,
2 what his reason was, he can ask what conversation this lady
3 had with Campbell.

4 BY MR. NEAL:

5 Q Was there any other conversation?

6 A No other conversation.

7 Q About that.

8 A It was--

9 MR. SCHIFFER: (Interposing) May we fix the time
10 and place, Your Honor, of that conversation just related to?

11 THE COURT: All right.

12 BY MR. NEAL:

13 Q Mrs. Brown, the defendants would like you to try
14 to fix the date of that conversation, so could you try to
15 do that? Maybe it would help you to refer to your cards.

16 A It was during November, I think possibly when he
17 checked out November 7th.

18 MR. BRANSTETTER: May it please the Court, I
19 object when it possibly was. If the lady knows she should
20 state, if she does not then she should so state.

21 THE COURT: She may state to the best of her
22 recollection.

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1 Q Is that to the best of your recollection, Mrs.
2 Brown?

3 A Just a moment, please. To my recollection it was
4 near a weekend. Possibly November 16 or November 7. I can't
5 be definitely sure. It was regarding his return to our place
6 to make a reservation and he said he would return the first
7 of the week or about. I don't remember the exact date.

8 MR. NEAL: Thank you, Mrs. Brown. You may examine.

9 MR. BRANSTETTER: No questions, may it please the
10 Court.

11 THE COURT: All right.

12 (Witness excused.)

13 MR. NEAL: The government calls Miss Ernestine
14 Williams.

15 MISS ERNESTINE WILLIAMS,

16 a witness called at the instance of the United States of
17 America, having been first duly sworn, was examined and
18 answered as follows:

19 DIRECT EXAMINATION

20 BY MR. NEAL:

21 Q You are Miss Ernestine Williams?

22 A Yes.

23 THE COURT: Sorry, I didn't understand your name.
24 Miss Ernestine Weel?

25 THE WITNESS: Williams.

1 BY MR. NEAL:

2 Q Miss Williams, we all have to hear you. Will
3 you speak loudly please and face the ladies and gentlemen
4 of the jury. Miss Williams, where do you presently reside?

5 A 1212 Euclid Avenue, Louisville, Kentucky.

6 Q 1212 Euclid Avenue, Louisville, Kentucky?

7 A Yes.

8 Q How long have you resided there?

9 A Practically all my life.

10 Q Well, at least, you were residing there in
11 October, November and December, 1962?

12 A Yes.

13 Q We have a calendar over here of the months, on
14 whatever you call that thing. Would you give us, Miss
15 Williams, your--are you familiar with the Defendant Larry
16 Campbell?

17 A I know Larry Campbell.

18 Q Would you point Larry Campbell out, please?

19 A Over there.

20 Q The man I'm pointing to?

21 A Yes, sir.

22 MR. NEAL: May the record show that Miss Williams
23 pointed out the Defendant Larry Campbell.

24 MR. HAGGERTY: I think more accurately Mr. Neal
25 did.

1 THE COURT: All right.

2 BY MR. NEAL:

3 Q Miss Williams, were you pointing to Mr. Campbell
4 before I went over there?

5 A I pointed Mr. Campbell out.

6 Q And that was before I went over, wasn't it?

7 A Yes.

8 Q Miss Williams, you have known Larry Campbell for
9 some years, have you?

10 A Yes, I have.

11 Q Now, did you have occasion to meet Mr. Campbell
12 in the fall, particularly October, 1962?

13 A Yes, I did.

14 Q Would you tell us how that came about?

15 A My grandfather brought him to my house.

16 Q How often did you see him during the fall then
17 when he was in Louisville thereafter in 1962?

18 A Quite frequent.

19 Q Well, would you say it was on a daily basis?

20 A On a daily basis.

21 Q What time of day would you see him?

22 A It would be in the early part of the day. Between
23 2:00 and 7:00.

24 Q Somewhere in the day at 1:00 or 2:00 until you
25 went on to work?

- 1 A That's right.
- 2 Q I believe you work at night. Is that correct?
- 3 A Yes.
- 4 Q Pardon me?
- 5 A That's correct.
- 6 Q Now, did Mr. Campbell do any work in your pre-
- 7 sence?
- 8 A Not in my presence to my knowledge.
- 9 Q As far as you are concerned he was--you were
- 10 relaxing, the two of you?
- 11 A That's right.
- 12 Q I believe I didn't ask you to tell the jury your
- 13 occupation, I believe you are a nurse, aren't you?
- 14 A Yes, I am.
- 15 Q And you are working as a nurse?
- 16 A Yes, I am.
- 17 Q Now, Miss Williams, did you and Mr. Campbell ever
- 18 go to a place called Joe's Palm Room during this period of
- 19 time?
- 20 A Yes, we did.
- 21 Q That is in Louisville?
- 22 A Yes.
- 23 Q When you were with Mr. Campbell at Joe's Palm
- 24 Room, did he ever do anything with respect to telephones?
- 25 A I beg your pardon?

1 Q Well, I am trying not to lead you, Miss Williams.
2 When you were with the Defendant Campbell at Joe's Palm Room,
3 did he ever leave you and get up and go outside or anything?

4 A Yes, he did.

5 Q For what purpose would he state?

6 MR. BRANSTETTER: May it please the Court, could
7 I make inquiry as to whether or not this witness has been
8 sitting in the courtroom during the proceedings?

9 THE COURT: Yes. Have you been in the courtroom
10 during the proceedings?

11 THE WITNESS: During this one?

12 THE COURT: Yes.

13 THE WITNESS: No, I haven't.

14 THE COURT: All right.

15 BY MR. NEAL:

16 Q I believe I had asked you and you said that when
17 you during these times when you were with Mr. Campbell and
18 the Defendant Campbell and you were at Joe's Palm Room he
19 would get up and go outside, isn't that correct?

20 A Yes, he would.

21 Q And I had asked you what would he tell you he
22 was going to do, if anything?

23 A He said he was going to make a telephone call.

24 Q Make a telephone call?

25 A Yes, outside.

1 Q Well, he said he was going to make a telephone
2 call?

3 A Said he was going to make a telephone call.

4 Q Now, are there telephone booths outside of Joe's
5 Palm Room?

6 A Yes, there are.

7 Q Are you familiar with the physical area of Joe's
8 Palm Room and the outside telephones?

9 A Yes, I am.

10 MR. NEAL: I ask that the reporter mark this
11 picture as Government's Exhibit No. 16.

12 (Thereupon, the photograph referred to above was
13 marked for identification as Government's Exhibit
No. 16.)

14 BY MR. NEAL:

15 Q To save time, your Honor, I will ask the reporter
16 to mark as Government's Exhibit No. 17 and this photo as
17 Government's Exhibit No. 18.

18 (Thereupon, the photographs referred to above
19 were marked respectively for identification as
Government's Exhibit No. 17 and No. 18.)

20 BY MR. NEAL:

21 Q Miss Williams, I would like to show you what has
22 been marked for identification as Government's Exhibit No. 17
23 and ask you if that is an accurate picture of the physical
24 area surrounding the Joe's Palm Room showing the phone booths?

25 A Yes, it is.

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MR. NEAL: We offer in evidence Government's

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Exhibit No. 16.

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MR. HAGGERTY: May we have an opportunity to

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inspect it?

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MR. NEAL: Yes, sir, Mr. Haggerty.

End Tk 22 6

Tk 23 fls.

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1 MR. NEAL: Would it inconvenience you if I con-
2 tinued my examination?

3 MR. BRANSTETTER: Yes.

4 THE MARSHAL: Let's have order in the courtroom,
5 please.

6 MR. NEAL: Objection? May the picture be received
7 in evidence?

8 THE COURT: All right.

9 (The photograph previously marked Government's
10 Exhibit No. 16 for identification was received
in evidence.)

11 BY MR. NEAL:

12 Q These two, are you able to see the phone booths
13 that are outside Joe's Palm Room?

14 THE COURT: Which exhibit are you referring to?

15 MR. NEAL: Exhibit No. 16, your Honor.

16 A Yes, I am.

17 Q And they are two in number?

18 A Yes.

19 MR. NEAL: May we show this to the jury, your
20 Honor?

21 THE COURT: All right.

22 (The photograph referred to above was passed
23 to the jury.)

24 BY MR. NEAL:

25 Q Now, Miss Williams, do you remember a particular

1 occasion on one of these times when Mr. Campbell went outside
2 to make a telephone call?

3 MR. BRANSTETTER: Now, may it please the Court,
4 he is stating to the witness what the answer is and he is
5 leading the witness, he is stating to her what she should say.

6 THE COURT: Just a moment, Mr. Neal. You have
7 introduced for identification Exhibits 16, 17, and 18. You
8 have introduced in the record Exhibits 16 and 17, is that
9 correct?

10 MR. NEAL: Just Exhibit 16, your Honor, 17 I am
11 not to yet.

12 THE COURT: All right. Restate your question.

13 BY MR. NEAL:

14 Q I'd like to direct your attention to a particular
15 time on one of these occasions when Mr. Campbell went outside
16 to make a telephone call, and I ask you if anything had
17 happened just prior to that?

18 A What particular time are you speaking of?

19 Q Well, had he received any message prior to the
20 time of making one of these calls?

21 MR. BRANSTETTER: Now, may it please the Court,
22 this calls for a simple yes or no answer, and that is one of
23 the objections on leading questions.

24 THE COURT: Overrule the objection.

25 BY MR. NEAL:

1 Q Have you answered?

2 A No, I haven't answered. Would you please restate
3 your question again, please?

4 Q Would you state whether or not on one occasion
5 before going out of Joe's Palm Room and making a telephone
6 call he received a message from someone in your presence,
7 of course?

8 A Yes.

9 Q From whom was the message received?

10 A From the Brown's Guest House.

11 Q And what was that message?

12 A I don't know what the message was.

13 Q Well, what -- you don't know what the message
14 was?

15 MR. BRANSTETTER: May it please the Court, that's
16 just what she said.

17 MR. NEAL: Well, I'd like for her to have a moment
18 to think about that.

19 A I didn't hear the message, only that he was to
20 call the guest house.

21 Q Oh, I see. Then the message was that he was to
22 call the guest house?

23 A That's right.

24 Q I see. Now, Miss Williams, did you ever meet a
25 man by the name of Chuck O'Brien?

1 A Yes, I did.

2 Q In Louisville?

3 A Yes, I did.

4 MR. NEAL: Is Mr. O'Brien in the courtroom?

5 Q Now, how did you happen to meet Mr. O'Brien?

6 A Larry Campbell and I drove to the airport to
7 pick Mr. O'Brien up.

8 Q Pick Mr. O'Brien up?

9 A Yes.

10 Q And what did you do then?

11 A We drove to the Palm Room.

12 Q Joe's Palm Room?

13 A That's right.

14 Q What happened then?

15 A We had a drink.

16 Q Well, thereafter, with respect to phone calls,

17 Miss Williams, I am not inquiring about something that is

18 none of my business.

19 A Larry Campbell got up and went outside.

20 Q And said he had to make a phone call?

21 MR. BRANSTETTER: May it please the Court --

22 THE COURT: (Interposing) Sustain the objection.

23 Q (By Mr. Neal) Did he say anything as to why he
24 was going outside?

25 A He said he was going to make a phone call.

1 Q I see. Now, Miss Williams, did Mr. Campbell ever
2 tell you what his occupation was?

3 A He told me he was a member of the Teamsters
4 Union.

5 Q A member of the Teamsters Union in what city?

6 A Detroit, Michigan.

7 Q Detroit. And what Teamsters local there?

8 A Beg your pardon?

9 Q Did you give you any number of any local,
10 Teamsters local, that he was business agent for?

11 A I have his business card but offhand I don't
12 remember the number.

13 Q Was it Local 299?

14 A I don't remember.

15 Q I see. Did he ever tell you who his boss was?

16 A No.

17 Q He did not?

18 A No.

19 Q Now, do you know who Mr. Chuck O'Brien is?

20 A No.

21 Q Did Mr. Campbell ever tell you?

22 A Just only said he worked with him.

23 Q Worked with him?

24 A (Witness moves head up and down.)

25 Q I see. Now, Miss Williams, did you ever have

1 occasion to be at the Blue Flame Room or outside of the Blue
2 Flame Room, or perhaps it was then known as the Paradise Bar?

3 A I have had occasion to be outside.

4 Q Would you tell us how that came about?

5 A We drove, Larry Campbell and I drove by there one
6 night, he used one of the phone booths.

7 Q Pardon me?

8 A He used one of the phone booths outside of the
9 Blue Flame.

10 Q Was that your reason for going by there?

11 MR. BRANSTETTER: Now, may it please the Court,
12 she said she drove by. She hasn't stated that there has been
13 a reason.

14 Q (By Mr. Neal) Did he give any?

15 MR. BRANSTETTER: Ask if that was the reason,
16 if she knows.

17 THE COURT: Sustain the objection.

18 Q (By Mr. Neal) Did he give you any reasons?

19 A He said he had to make a stop.

20 Q Had to make a stop there?

21 A Yes.

22 Q And did he make a stop there?

23 A Yes, he did.

24 Q And what did he do?

25 A He went in one of the telephone booths.

1 Q And isn't it true, Miss Williams, that he said
2 he was going there to receive a call?

3 MR. BRANSTETTER: Now, may it please the Court --

4 THE COURT: (Interposing) Sustained. Sustain
5 the objection.

6 MR. BRANSTETTER: The very matter, may it please
7 the Court, that I raised earlier. Counsel is requiring
8 consistent objections, knowing that it's proper and I must
9 object and it's unfair.

10 THE COURT: All right. Sustain the objection.

11 MR. NEAL: I just wanted to direct her attention
12 to this matter.

13 BY MR. NEAL:

14 Q Miss Williams, did he say any particular reason
15 about why he was going there or was he going there for any
16 particular purpose?

17 A I don't know any other particular purpose other
18 than to use the telephone.

19 Q He was going there to use the telephone?

20 A Right.

21 Q Now, are you familiar with the physical area
22 around the Blue Flame Room or Paradise Bar?

23 A Yes.

24 Q I wanted to ask you, did he give you any reason
25 why he was going to that particular phone? If he didn't,

1 just say he didn't give you any particular reason.

2 A Not that I remember, no.

3 Q Didn't give you any reason that you remember.

4 But he was going to that particular phone?

5 A Yes.

6 Q I show you what has been marked as Government's
7 Exhibit No. 17 and ask you if that is an actual picture of
8 the telephone booths used by Mr. Campbell on this particular
9 occasion, one of which was used by Mr. Campbell?

10 A Yes.

11 Q And is that an accurate picture of the area
12 shown there?

13 A This is the area.

14 MR. NEAL: I show Government's Exhibit 17 to
15 counsel for the defendants and offer it in evidence.

16 MR. BRANSTETTER: May it please the Court, we
17 are not objecting to the photograph itself, but we do object
18 to the writing as contained on the back.

Tk 23 End 19
Tk 24 fls

MR. SCHIFFER: May I see the photograph, please?

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1 MR. NEAL: The government will be glad to cover
2 up the writing on the back.

3 THE COURT: All right, eliminate any writing on
4 the back.

5 MR. SILETS: Your Honor, the same objection on
6 behalf of the Defendant Dorfman that it is not to be received
7 against him, sir.

8 THE COURT: All right. It will not be received,
9 ladies and gentlemen, against any defendant to whom it is
10 not shown to relate in accordance with the instructions of
11 the Court heretofore given you.

12 MR. NEAL: Mr. Branstetter, this is just an
13 indication of what has already been said, do you really
14 object to this on the back?

15 THE COURT: Well, let's eliminate it, gentlemen,
16 rather than have any problem.

17 MR. NEAL: May I show the front part to the jury?

18 THE COURT: Yes.

19 BY MR. NEAL:

20 Q Miss Williams, when Mr. Campbell would leave
21 Joe's Palm Room to make a call I assume he would return a
22 short time later?

23 MR. BRANSTETTER: May it please the Court,
24 counsel is stating what for her to say and he said then I
25 presume he would return.

1 THE COURT: Sustain the objection.

2 BY MR. NEAL:

3 Q Did he return?

4 A Yes, he did.

5 Q Would he return after every time?

6 A Yes, he would.

7 Q Now, are you familiar with a place called the
8 Downtown Grill also located near the Gulf Oil Filling Station
9 at 18th and Walnut Street, Louisville, Kentucky?

10 A Yes, I am.

11 Q Now, is there a phone booth there in that area?

12 A There is a phone booth by the filling station,
13 I believe.

14 Q Was it ever used by the Defendant Campbell in
15 your presence?

16 A Yes, it was.

17 Q To make a telephone call?

18 A Yes.

19 Q I show you what has been marked for identification
20 as Government Exhibit No. 18 and ask you if that is an
21 accurate picture of the telephone there?

22 A Yes, it is.

23 MR. NEAL: I offer Government's Exhibit No. 18
24 into evidence and I show it to defense counsel.

25 MR. BRANSTETTER: There is some writing on the

1 back of this particular photograph also, may it please the
2 Court, that we object to and we would also object to its
3 admission until it is established if the case may be that it
4 truly represents what it purports to at least because the dating
5 on it shows a period of time much later and I don't know what
6 period of time this witness is talking about.

7 BY MR. NEAL:

8 Q When were you last in this area, Miss Williams?

9 A I beg your pardon?

10 Q When were you last at this area here?

11 A Since 1962.

12 Q Were you there, you were there during October,
13 November and December, 1962?

14 A Yes.

15 Q And it is an accurate picture of the place at
16 that time?

17 A Yes, it is.

18 MR. NEAL: That is what we are offering it for,
19 Your Honor.

20 THE COURT: Well, any writing on the back would
21 not be competent, but otherwise, the exhibit will be admitted.

22 (The photograph referred to above was
23 received in evidence as Government
Exhibit No. 18, witness Williams.)

24 MR. NEAL: May I show the exhibit, the front part
25 of the exhibit to the jury?

1 THE COURT: Yes.

2 BY MR. NEAL:

3 Q Now, Miss Williams, when Mr. Campbell and Mr.
4 O'Brien, Chuck O'Brien were together and Mr. Campbell went
5 out to make a call would you tell me approximately what time
6 of the evening that was?

7 A It was around eleven-thirty or twelve midnight.

8 MR. SILETS: Your Honor, is the Exhibit No. 18
9 admitted in evidence?

10 THE COURT: Yes.

11 MR. SILETS: Will the Court instruct the jury
12 with respect to that as well?

13 THE COURT: Yes, these exhibits will not be
14 received or considered as to any defendant not shown to in
15 some manner relate to it in accordance with this testimony
16 and in accordance with any previous instructions of the Court.

17 BY MR. NEAL:

18 Q Now, Miss Williams, would you tell me your
19 telephone number, please, your home telephone number?

20 A 636-3698.

21 Q 636-3698?

22 A That's right.

23 Q Did you have that number in October and November
24 and December, 1962?

25 A Yes, I did.

1 Q In or around November, specifically directing
2 your attention to November 14, 1962, did the Defendant
3 Campbell use your phone to make a telephone call?

4 A Yes, he did.

5 Q Did he make some long distance calls on your
6 phone?

7 A Yes, he did.

8 MR. NEAL: I would like for the court reporter to
9 mark this next document as Government Exhibit No. 19.

10 (The document referred to above, a telephone bill,
11 was marked for identification as Government
Exhibit No. 19.)

12 BY MR. NEAL:

13 Q I show you what has been marked for identification
14 as Government Exhibit No. 19 and ask you if you recognize
15 that.

16 A This is a telephone bill and it is my telephone
17 number.

18 Q Very well, this is your telephone bill?

19 A Yes, it is.

20 MR. NEAL: We offer in evidence Exhibit No. 19.

21 THE COURT: All right.

22 (Government's Exhibit No. 19 for
23 identification was received in
evidence, witness Williams.)

24 MR. NEAL: May I proceed, Your Honor?

25 THE COURT: Yes.

1 MR. SILETS: Your Honor, the same objection on
2 behalf of the Defendant Dorfman.

3 THE COURT: Yes, the same instructions, ladies
4 and gentlemen.

5 BY MR. NEAL:

6 Q I would just like to just read to the jury it
7 might be faster to read three of the telephone calls.
8 According to this--, let me ask you these questions, did
9 Mr. Campbell make the calls, long distance calls indicated
10 on that record?

11 A Yes, he did.

12 Q Three of these calls, ladies and gentlemen of
13 the jury, all dated November 14, 1962 are to Nashville,
14 Tennessee. CYpress 1-8644. CYpress 1-8644. There are five
15 calls there you say that Mr. Campbell made the last three
16 to Nashville, CYpress 1-8644, did he also make the two to
17 Detroit?

18 A I didn't hear where he made them from. I just
19 know he made the long distance calls on there all but the
20 one.

21 MR. BRANSTETTER: May I inquire of the witness,
22 did the witness state that she did not know that he made them
23 to Nashville, Tennessee as the witness here Mr. Neal just
24 stated?

25 MR. NEAL: She said he made all the calls.

1 MR. BRANSTETTER: But may I address the Court,
2 Mr. Neal stated that you said that Mr. Campbell made the ones
3 to Nashville and Detroit in his preferatory remarks. She
4 said she doesn't know who made them to those numbers and to
5 the city.

6 THE COURT: Well, you may cross examine the
7 witness on those matters.

8 BY MR. NEAL:

9 Q Miss Williams, Mr. Campbell told you at the time
10 he was making these calls that he would make them and he
11 would pay for the bill, didn't he?

12 A Yes, he did.

13 MR. SCHIFFER: We move the question and answer
14 be stricken, Your Honor, it is entirely leading. I don't
15 know how much more leading a question can be, Your Honor.

16 THE COURT: Yes, it was leading. It has already
17 been asked and answered. Overruled.

End
Tk 24

Tk 25
follows

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1 Q Miss Williams, the record in this case shows
2 that CYpress 1-8644 is the number in Nashville of Miss Mattie
3 Mix.

4 MR. SCHIFFER: Objected to, your Honor. This is
5 not the proper way to interrogate. He knows the proper way
6 and I am sorry that we must get up and object every time.

7 THE COURT: Sustained.

8 MR. NEAL: Your Honor, I can preface a question
9 by matters of record.

10 MR. SCHIFFER: Not by giving testimony, your
11 Honor.

12 MR. NEAL: It's a matter of record, your Honor,
13 undisputed record, as far as I know.

14 MR. SCHIFFER: No question about it being
15 undisputed. It's not being allowed by myself on behalf of
16 Mr. Parks.

17 BY MR. NEAL:

18 Q Now, do you know Miss Mattie Mix in Nashville?

19 A No, I don't.

20 Q Do you know the Defendant Tom Parks.

21 A No, I don't.

22 Q Now, Miss Williams, did Mister--the Defendant
23 Campbell say anything to you with respect to you with respect
24 to his boss at any time while he was with you?

25 MR. BRANSTETTER: Now, may it please the Court,

1 he is asking for a yes or no answer, he is leading the witness.
2 She has previously answered that he did not, it's in the
3 record.

4 Now, we would most respectfully request the Court
5 to instruct counsel and to admonish him to quit making these
6 statements and quit leading the witness.

7 MR. NEAL: Your Honor, I have to bring the witness--
8 I am not asking her what was said, I am going to ask her what
9 was said next.

10 THE COURT: Well, overrule the objection to this
11 question. There have been leading questions asked which the
12 Court sustained.

13 BY MR. NEAL:

14 Q Would you answer the question, please?

15 A He stated at one time that his boss was in trouble.

16 Q And anything else?

17 A That's all.

18 Q Did he at any time tell you who his boss was?

19 A Not to my knowledge, no.

20 Q Pardon me?

21 A No.

22 Q Miss Williams, perhaps I didn't ask you with
23 respect to this, I am not sure about this--with respect to
24 the phone booth across from the Downtown Grill, Government
25 Exhibit No. 18, you did state, did you not, that Campbell

1 made calls from that?

2 A He made one call while I was with him.

3 Q I see. Did he say anything with respect to
4 whether he--with respect to eating at the Downtown Grill?

5 A Beg your pardon?

6 Q Did Mr. Campbell ever say anything to you with
7 respect to eating at the Downtown Grill, which is shown in
8 this picture?

9 A We ate there, yes.

10 Q Did he say why he liked to eat there or if he
11 did like to eat there?

12 A It was good food.

13 Q Beg your pardon?

14 A It was good food there.

15 Q Is that all?

16 A That's all.

17 Q Is that all that you remember?

18 A That's all.

19 CROSS EXAMINATION

20 BY MR. BRANSTETTER:

21 Q Miss Williams, you had various conversations with
22 officials of the federal government, particularly the FBI,
23 is that correct?

24 A That's right.

25 Q We did have some little trouble in hearing you.

1 Would you mind speaking up just a little?

2 A Yes, I did.

3 Q Thank you. I believe you also had a conversation,
4 at least on one occasion, with a Mr. Durkin?

5 A Yes.

6 Q The gentleman sitting here at counsel table?

7 A Yes.

8 Q I believe in that conversation that you stated
9 and gave a statement to the FBI and I ask you specifically
10 if you did make this statement, "She stated that Mr. Durkin
11 had scared her when he implied that her safety and her
12 children's safety might be in danger as a result of her
13 testimony and the implication that she might eventually have
14 to move from Louisville."

15 Did you give this statement?

16 A I didn't give that exact statement.

17 Q Would you state exactly what you did give?

18 A At one time Mr. Durkin mentioned that it might
19 be necessary for myself and family to get away for a while.

20 Q To get away for a while?

21 A Now, that was--

22 Q (Interposing) This did scare you?

23 A It frightened me, sure

24 Q Did you feel intimidated?

25 A I don't know whether I was intimidated but I was

1 frightened.

2 Q And this was Mr. Durkin here?

3 A Yes, it is.

4 MR. BRANSTETTER: That's all.

5 THE COURT: All right.

6 MR. NEAL: Just a moment. Is the defense counsel
7 through?

8 MR. BRANSTETTER: That's all I care to cross-
9 examine her on at this moment.

10 REDIRECT EXAMINATION

11 BY MR. NEAL:

12 Q Miss Williams, did you get the impression that
13 Mr. Durkin was trying to get you to testify falsely or some-
14 thing like that?

15 A No. My only worry was involving my children,
16 that was the only thing that frightened me.

17 Q Wasn't he just trying to look out for your welfare?

18 MR. BRANSTETTER: Now, may it please the Court,
19 he is leading the witness.

20 THE COURT: Sustained. Sustain the objection.

21 MR. NEAL: Very well. No further questions.

22 THE COURT: All right. If there's no further
23 examination this witness may be excused. You may be excused.

24 MR. SILETS: Your Honor, will my objection
25 to this witness' testimony stand?

1 THE COURT: Yes, and the same instructions,
2 ladies and gentlemen, of course, you will not consider the
3 testimony of any witness with respect to any defendant who
4 it is not shown in any way related.

5 (Witness excused.)

6 MR. DALE: Raise your right hand, please. Do
7 you solemnly swear that the evidence you will give in this
8 case will be the truth, the whole truth, and nothing but the
9 truth, so help you God?

10 MR. ISAACS: Yes, I do.

11 MR. DALE: Have a seat, sir.

12 J. J. ISAACS,

13 a witness called at the instance of the United States of
14 America, being first duly sworn, was examined and testified
15 as follows:

16 DIRECT EXAMINATION

17 BY MR. NEAL:

18 Q Would you state your name, please?

19 A J. J. Isaacs.

20 Q And--

21 THE COURT: (Interposing) How do you spell that?

22 Q By whom are you employed, Mr. Isaacs?

23 A Southern Bell Telephone and Telegraph Company in
24 Louisville, Kentucky.

25 THE COURT: How do you spell that, Mr. Isaacs?

1 THE WITNESS: (Spelling) I-s-a-a-c-s.

2 THE COURT: All right.

3 BY MR. NEAL:

4 Q How long have you been employed by Southern Bell
5 in Louisville?

6 A By Southern Bell twenty-eight and a half years.

7 Q Twenty-eight and a half years?

8 A That is correct.

9 Q How long have you been in the Louisville office?

10 A Well, this last time I have been in Louisville
11 since 1956.

12 Q What is your position there, Mr. Isaacs?

13 A District commercial supervisor.

14 Q District commercial supervisor?

15 A That's correct.

16 Q Are you the custodian of the records of your
17 company?

18 A Yes, I am.

19 Q Mr. Isaacs, I believe last evening, or was it
20 the evening before, we went over some of these records and
21 you needed your glasses?

22 A That is correct.

23 Q I hope you have them today.

24 A Right here.

25 Q Good. Mr. Isaacs, I am going to show you--first

1 I am going to ask to have marked these exhibits, Exhibit 20,
2 I believe it is, 21 and 22.

3 (The telephone records referred to above were
4 marked Government Exhibits Nos. 20, 21 and 22,
Witness Mr. Issacs, for identification only.)

5 BY MR. NEAL:

6 Q Mr. Issacs, I show you what has been marked for
7 identification as Government's Exhibit No. 20. May I stand
8 here just for a moment, your Honor?

9 THE COURT: All right.

10 Q Government Exhibit No. 20 and I ask you what that
11 is, sir?

12 A Well, that's a commercial record of the telephone
13 service in Louisville and it shows that is Winstead's Gulf
14 Service Station located at 1801 West Walnut Street.

15 Q Now, are you familiar with the premises there?
16 By the way, does it give the phone number there?

17 A Yes, it does, 58 2-9860.

18 Q What kind of a phone is that?

19 A That is a coin telephone.

20 Q Is that record there a record of the company
21 made in the regular course of business?

22 A Yes, it is.

23 Q Is the regular course of your company's business
24 to make that record?

25 A Yes, it is.

1

Q Now, sir, I show you what has been marked for

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identification as Government's Exhibit Nos. 21 and 22 and

3

ask if those are records of your company?

4

A Yes, they are.

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End Tk 25⁵
Tk 26 fls.

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1 Q Are those records made in the regular course of
2 your business?

3 A Yes, they are.

4 Q And is it the regular course of your business
5 of your company to make those records?

6 A Yes.

7 MR. NEAL: We offer Government Exhibits 20, 21,
8 and 22 into evidence.

9 THE COURT: All right.

10 MR. NEAL: And show them to defense counsel.

11 May the records be received, your Honor?

12 THE COURT: All right.

13 (Documents referred to above were marked Govern-
14 ment Exhibits 20, 21, and 22, Witness Isaacs,
and received in evidence.)

15 MR. SILETS: With the same objection.

16 THE COURT: Yes, with the same instructions, not
17 consider them as to any defendant with whom they do not
18 relate.

19 BY MR. NEAL:

20 Q Mr. Isaacs, I understand this record here shows
21 the physical location of that telephone and that telephone
22 number, is that correct?

23 A Yes, sir.

24 Q Now, would you tell me what the physical location
25 there is one more time?

1 A 1801 West Walnut Street.

2 Q And what is the phone number?

3 A 582-9860.

4 Q 582-9860?

5 A Yes, sir.

6 Q And can you tell from there whether that was the
7 same number in October, November, and December 1962?

8 A Yes, it was.

9 Q Now, sir, are you familiar with the location of
10 that -- by the way, is that a phone booth?

11 A Yes, sir, it is, aluminum phone booth.

12 Q Were you familiar with the physical location of
13 that phone booth?

14 A Yes, sir, I am.

15 Q I show you Government Exhibit No. 18 and ask you
16 if that is the phone booth?

17 A Yes, it is.

18 Q So, that phone booth there contains that number,
19 is that correct?

20 A That's correct.

21 Q Now, I will show you Government Exhibits No. 21
22 and 22, I ask you if you can tell me what they are, sir?

23 A Well, these are records of long-distance calls
24 that were made from one location to another.

25 Q What was the location in Louisville?

1 A At this location, 1801 West Walnut Street.

2 Q From that phone booth?

3 A That's correct.

4 Q And what was the date?

5 A October 22, 1962.

6 MR. BRANSTETTER: May it please the Court, I
7 understand counsel is now having the witness identify these
8 or testify about them?

9 MR. NEAL: They are in evidence. I am having him
10 testify about them.

11 MR. BRANSTETTER: And he is testifying where
12 the phone calls were made from or what the records show?

13 MR. NEAL: I am having him to explain the records.

14 MR. BRANSTETTER: All right. I object to him
15 asking if a phone call was made from a particular place to a
16 particular place. He can state his records show that. But
17 he cannot state that the phone call was made.

18 MR. NEAL: All right, I will rephrase the question.

19 BY MR. NEAL:

20 Q Do your records show -- what do your records
21 show with respect to the phone calls?

22 A Well, the records show that the telephone call
23 was made from this location to Detroit, Michigan, on October
24 22, 1962.

25 Q Of what year, sir?

- 1 A 1962.
- 2 Q Now, does it show the number in Detroit, Michigan,
3 to which that call was made?
- 4 A Yes, sir, it does.
- 5 Q What is the number in Detroit, Michigan?
- 6 A VE 7-1425.
- 7 Q VE 7-1425 in Detroit, Michigan?
- 8 A That's correct.
- 9 Q Would you happen to know whose number that is
10 in Detroit, Michigan?
- 11 A No, sir.
- 12 Q Would you give us the -- now, that was October
13 22, 1962, is that correct?
- 14 A Yes, sir.
- 15 Q Would you give us the time of day of that call?
- 16 A Well, that was made at four minutes after twelve
17 in the morning, and the call lasted fifty seconds.
- 18 Q And the call lasted fifty seconds?
- 19 A Yes, sir.
- 20 Q And was that a coin or what else?
- 21 A It was a coin telephone. Paid collect. Paid at
22 the station where the call originated.
- 23 Q What we call a coin paid?
- 24 A Coin-paid message.
- 25 Q Now, would you tell what the other record shows

1 then?

2 THE COURT: You refer to the other record, let's
3 describe it.

4 MR. NEAL: I beg your pardon, your Honor, I
5 believe that is No. 22, Government's Exhibit No. 22.

6 BY MR. NEAL:

7 Q Would you tell us what Government Exhibit No. 22
8 shows?

9 A Well, it shows that a call was made from this
10 location.

11 Q That phone booth?

12 A Yes, sir, and it was to --

13 MR. HAGGERTY: (Interposing) Just a moment,
14 it isn't clear from the examination what phone booth. Let's
15 identify them by exhibits.

16 MR. NEAL: I beg your pardon, your Honor, Govern-
17 ment Exhibit No. 18.

18 MR. BRANSTETTER: If the Court please, this
19 witness couldn't say it was made from this phone booth and
20 this is the error that counsel keeps leading into. He can
21 testify and I would respectfully request that counsel come
22 back here as we all have been doing and ask the witness to
23 describe the document.

24 THE COURT: All right.

25 MR. NEAL: Your Honor, I asked the Court's permis-

1 sion, of course, to go up there because I thought it would
2 expedite matters. If that is of some concern to defense
3 counsel, of course, I will come back. As far as the testimony
4 of the witness is concerned, this was a paid phone call,
5 according to the records, and in view of the premises that the
6 call was made from this phone booth, according to the records.

7 THE COURT: Let's proceed examining him about
8 what the records reflect.

9 BY MR. NEAL:

10 Q Would you tell us about what Government Exhibit
11 No. 22 reflects, we were cut off there in the middle of it,
12 I believe.

13 A Yes, sir, I will. It is a record of a long-
14 distance call from that phone booth, telephone number 582-9860
15 to Detroit, Michigan. Telephone number VE 7-1425. And it was
16 made at 12:39 a.m. on October 22, 1962. And the call lasted
17 one minute and thirty-one seconds. And that was a coin-
18 paid message from that booth.

19 Q That twelve-thirty-something there, that is after
20 midnight?

21 A That's correct, a.m.

22 Q Just after the bewitching hour?

23 MR. BRANSTETTER: I don't believe the evidence
24 shows that yet, may it please the Court.

25 THE COURT: Sustained.

1 MR. NEAL: Now, Mr. Reporter, I would ask you to
2 mark other records here as Government Exhibits No. 23, 24, 25,
3 26, 27, 28.

4 (Documents referred to above were marked for
5 identification as Government Exhibits Nos. 23,
24, 25, 26, 27, and 28.)

6 BY MR. NEAL:

7 Q I show you what has been marked for identification
8 as Government Exhibits No. 23 through 28 and I will ask you
9 first if they are records of your company?

10 A Yes, they are.

11 Q And are they records of your company made in
12 the regular course of business?

13 A Yes, sir.

14 Q And was it in the regular course of your company's
15 business to make those records?

16 A It certainly is.

17 MR. NEAL: I offer in evidence Government Exhibits
18 23 through 28.

19 THE COURT: All right.

20 (Documents referred to above were received in
21 evidence as Government Exhibits Nos. 23 through
28, inclusive, Witness Isaacs.)

22 MR. NEAL: And I show them to counsel for the
23 defendants.

24 MR. SILETS: Same objection, your Honor.

25 THE COURT: Same instructions.

1 MR. NEAL: I guess there is no objection, your
2 Honor, may they be received in evidence?

3 THE COURT: All right.

4 BY MR. NEAL:

5 Q Mr. Isaacs, defense counsel has insisted that I
6 stand back there, but did you take that picture?

7 MR. HAGGERTY: What is the exhibit number, please,
8 Mr. Neal?

9 MR. NEAL: Exhibit No., of the picture is
10 Exhibit No. 17.

11 Q (By Mr. Neal) Now, I am showing you Government
12 Exhibit No. 23 and I ask you what that is, sir?

13 A This is a record of telephone service located at
14 1235 West Chestnut Street, Louisville, Kentucky, with
15 telephone number 584-9227.

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Tk 27.

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Isaacs - Direct

2023

1 Q Now, have you been to that location physically,
2 sir?

3 A Yes, I have.

4 Q Are you familiar with the area?

5 A Yes, sir.

6 Q I show you Government's Exhibit No. 17 and ask you
7 if one of those pay phones there is the number you have just
8 read or contains the number you just read.

9 A It did.

10 Q Or if it did in October, November and December,
11 1962?

12 A It did in October, 1962.

13 Q Did it also in November of 1962?

14 A Yes, sir.

15 Q And December of 1962?

16 A Yes, sir.

17 Q That's the period we have. Now, sir, by referring
18 to this picture, I'm going to hand you Government's Exhibit
19 No. 23, wait a minute, No. 24 through 28, I will go back over
20 there, sir, and you tell me what the record reflects.

21 THE COURT: Identify each exhibit as you refer
22 t o it.

23 Q And give us each exhibit number, sir, as you give
24 us the information.

25 A All right, sir. Exhibit No. 24 is a record of

1 of a long distance call from telephone number 584-9227.

2 Q In Louisville?

3 A In Louisville, Kentucky, that this picture shows.

4 Q Is that one of the phone booths in that picture?

5 A That's correct.

6 Q That would be correct of all of the records you
7 are going to read, is that correct?

8 A That is correct, yes, sir. And the call was made
9 to C18644 in Nashville, Tennessee.

10 Q C1?

11 A CY 1-8644.

12 MR.SCHIFFER: That's what he said.

13 Q Would you read the number again? There seems to
14 be some mistake.

15 MR. SCHIFFER: There is no mistake.

16 A CY 1-8644.

17 Q CY 1-8644?

18 A Yes, sir.

19 Q Thank you. Now, would you give us the date of
20 the call, the time of the day of the call and the duration
21 of the call?

22 A The date of the call was October 23rd, 1962, at
23 7:30 p. m., lasted 22 seconds and is a coin cash paid message.

24 Q Now, would you take Government's Exhibit No. 25
25 and do the same thing, sir?

1 A That is a call from telephone number 584-9227 to
2 Nashville, Tennessee, telephone number CY 1-18644.

3 Q Would you read that number again, sir?

4 A CY 1-8644.

5 Q In Nashville, Tennessee?

6 A That is correct, October 23rd, 1962, and the call
7 was made at 9:05 p. m., and lasted two minutes and 25 seconds.

8 Q And was it made from one of the booths in that
9 picture there, sir?

10 A Yes, it was.

11 MR. BRANSTETTER: Now, may it please the Court,
12 that is exactly what I have objected to throughout. He can
13 show what his records show the number was that was given on
14 his records and I think this witness would testify that anyone
15 could give any number they wanted to when they were making
16 a phone call, they would not have to give the one that is
17 there. He can state what his records show and that is all.
18 I think it's unfair to keep insisting that this witness said
19 that call was made from that one in the picture, it's not
20 fair, it's not proper.

21 THE COURT: Well, those are matters upon which
22 you may cross examine.

23 BY MR. NEAL:

24 Q Now, Mr. Isaacs, would you go to Government's
25 Exhibit No. 26? Oh, by the way, how was that one paid?

1 A Cash paid.

2 Q Now, will you go to Government's Exhibit No. 26?

3 A All right, sir. It was a call from telephone
4 number in Louisville, Kentucky, 584-9227 and it was made to
5 Nashville telephone number CY 1-8644 on October 24th, 1962.
6 It is a coin cash paid message and the call was made at 7:48
7 a. m., and lasted for 20 seconds.

8 Q And to Government's Exhibit, next one, Government's
9 Exhibit No. 27.

10 A This call was made from Louisville, Kentucky,
11 telephone number 584-9227 and it was made to Nashville,
12 Tennessee, telephone number CY 1-8644 on October 24th, 1962,
13 it was a coin cash paid message and the call was made at
14 8:07 a. m. and lasted for two minutes and 55 seconds.

15 Q I believe we have one more, do we not, sir?

16 A Yes, sir.

17 Q In that batch?

18 A This is a record of a call made from Louisville,
19 Kentucky, telephone number 584-9227 to the Nashville,
20 Tennessee, telephone CY 1-8644 on October 25th, 1962. It was
21 a coin cash paid message and the call was made at 7:54 p. m.
22 and lasted for one minute and 33 seconds.

23 Q And were they all made from one of the booths in
24 the pictures?

25 A That is correct.

1 MR. BRANSTETTER: Now, may it please the Court,
2 he asked the same question again. The records may show that
3 a certain number was used.

4 THE COURT: All right. Overrule the objection.

5 MR. NEAL: I ask that you mark this as Government
6 Exhibit Nos. 29, 30, 31, 32, 33, 34, for identification.

7 (The telephone company records referred to above
8 were marked Government Exhibits No. 29, 30, 31,
32, 33 and 34, witness Mr Isaacs for identification.)

9 BY MR. NEAL:

10 Q Now, I show you what has been marked for
11 identification as Government's Exhibit No. 29 and I will ask
12 you if that is the record of your company?

13 A Yes, sir, it is, made in the course of our operations
14 daily.

15 Q It is made in the daily course of business?

16 A That's right.

17 Q In the regular course of business that is required
18 to be made?

19 A Yes, sir, it is.

20 Q I show you Government's Exhibits 30 through 34 and
21 ask you if those are records of your company?

22 A Yes, they are.

23 Q Made in the regular course of business?

24 A Yes, sir.

25 Q Is it necessary in the regular course of your

1 business to make those records?

2 A Yes, it is.

3 MR. NEAL: Offered in evidence as Government's
4 Exhibits 29 through 34.

5 MR. SILETS: Same objection, Your Honor.

6 THE COURT: All right, with the same instructions
7 with regard to not considering them to any of the defendants
8 to whom they are not shown to relate, otherwise than in
9 accordance with the instruction that the Court has heretofore
10 given.

11 MR. BERKE: I can't hear Your Honor.

12 THE COURT: I said they would not be considered
13 as to any defendants to whom they are not shown to relate
14 otherwise than in accordance with the instruction of the Court
15 heretofore given.

16 MR. BRANSTETTER: I assume the Court is not now
17 stating that they have been shown to relate to any defendant.

18 THE COURT: Well, I am not stating that they are,
19 that is for the jury.

20 MR. SILETS: Your Honor, we also may have an
21 understanding with the Court that it is also a standing
22 objection based on that Laughlin case that the records them-
23 selves may not ultimately be used because of the inadequacy
24 of the records to show any connection? Your Honor was going
25 to take that case and read it and would take it under advisement,

1 but I would like to direct, for Mr. Dorfman I would like the
2 record to show that we have a continuing objection, not only
3 as to the relevancy and immateriality as to Mr. Dorfman but
4 also on the basis of the inadequacy of that type of proof to
5 show any link.

6 THE COURT: All right.

7 MR. ALEXANDER: May it please the Court--

8 MR. BRANSTETTER: (Interposing) May it please
9 the Court, I made that objection, I believe, when the first
10 matter of this nature was handed in and also stated that the
11 opinion of the Court of Appeals had been handed the Court
12 and then handed in to opposing counsel and, of course, I
13 understand that since the Court has not ruled specifically on
14 that that all of this evidence is being admitted at this time
15 conditionally subject to being totally stricken if the
16 Court agrees with that opinion.

17 MR. NEAL: May we continue, Your Honor?

18 THE COURT: Well, very well then, the Court will
19 reserve any action upon this request at this time.

20 MR. BRANSTETTER: As to all defendants?

21 THE COURT: As to all defendants.

22 MR. BRANSTETTER: Thank you.

23 (The documents previously marked Government's
24 Exhibits Nos. 29 through 34 for identification
were received in evidence.)

25 BY MR. NEAL:

Q Now, sir, showing you Government's Exhibit No. 29,

1 I ask you if that is the customer card similar to the ones
2 you have spoken of before?

3 A Yes, sir, it is.

4 Q Is that a call coin phone located somewhere in
5 Louisville?

6 A That is correct.

7 Q What is the location in Louisville of that phone?

8 A 1301 Magazine Street.

9 MR. BRANSTETTER: May it please the Court, could

10 I ask what the witness is reading from?

11 THE COURT: What exhibit are we referring to?

12 THE WITNESS: Exhibit No. 29.

13 MR. NEAL: 29.

14 THE COURT: All right.

15 Q Now, sir, --

16 THE COURT: (Interposing) I didn't get what you
17 said about Exhibit 29.

18 Q Would you tell His Honor what Exhibit 29 is?

19 A This is a record of telephone service located
20 at 1301 Magazine Street in Louisville, Kentucky, with
21 telephone number 582-9689.

22 Q Is that the number that telephone had in November,
23 October, November and December, 1962?

24 A Yes, sir, it is.

25 Q Now, are you familiar with the premises there

27a

1 surrounding that geographic area?

2 A Yes, I am.

3 MR. BRANSTETTER: May it please the Court, I object
4 to his leading the witness. He can testify whether or not
5 he is familiar with this area if he is asked.

6 BY MR. NEAL:

7 Q Whether or not are you familiar with this area?

8 A I am familiar with this area.

9 Q Now, I show you Government's Exhibit No. 16, which
10 shows two phone booths and shows Joe's Palm Room and I ask
11 you if Government's Exhibit 29, telephone number 582-9689 is
12 the phone number carried by one of those phone booths?

13 A Yes, sir, it is and it's this one right here in
14 the center of the picture.

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1 MR. NEAL: May the record show that the witness
2 is pointing to the phone booth in the background in the center
3 of the picture of Exhibit No. 16 and on the left there what
4 place is on the left of that?

5 THE WITNESS: Joe's Palm Room.

6 BY MR. NEAL:

7 Q And was that the location of that particular
8 number in October, November, and December 1962?

9 A Yes, sir, it was.

10 Q Now, I show you Government Exhibits No. 30
11 through 34 and I will ask you to take No. 34 first and go
12 backwards. Now, starting -- by the way, sir, are you
13 familiar with the area you said, how far is Brown's Guest
14 House from that -- how far is Brown's Guest House from the
15 phone booth outside of the Blue Flame or Paradise Bar?

16 A Approximately a block and a half.

17 Q Now, going back to your phone booths outside of
18 Joe's Palm Room, would you start with Government Exhibit No.
19 34, I believe, and tell me what that is, please?

20 A This is a record of a long-distance call made from
21 Louisville, Kentucky, telephone number 582-9689 to Nashville,
22 Tennessee, telephone number CY 1-8644 on October 29, 1962.
23 It was a cash-paid call and the call was made at 7:10 p.m.
24 and lasted for nineteen seconds.

25 Q Now, sir, would you go to Government Exhibit No.

1 33, I believe it is, and tell us what that is?

2 A This is a record of a long-distance call from
3 Louisville, Kentucky, telephone number 582-9689 to Nashville,
4 Tennessee, telephone number CY 1-8644 on October 29, 1962,
5 coin cash-paid message. And the call was made at 9:09 p.m.
6 and lasted for one minute and thirty-five seconds.

7 Q And to the next exhibit, if you please, what is
8 it? No. 32?

9 A Yes, sir. This is a record of a long-distance
10 call from Louisville, Kentucky, telephone number 582-9689 to
11 Nashville, Tennessee, telephone number CY 1-8644 on November
12 6, 1962. Coin cash-paid message and the call was made at
13 10:04 p.m. and lasted for one minute.

14 Q And the next one, sir?

15 A Exhibit No. 31. This is a record of a long-
16 distance call from Louisville, Kentucky, telephone number
17 582-9689 to Nashville, Tennessee, telephone number CY 1-8644
18 on November 6, 1962. Coin cash-paid message. And the call
19 was made at 11:05 p.m. and lasted for three minutes and nine
20 seconds.

21 Q And the next one, the last one, sir?

22 A Exhibit No. 30, this is a record of a long-
23 distance call from Louisville, Kentucky, telephone number
24 582-9689 to Nashville, Tennessee, telephone number CY 1-8644
25 on November 13, 1962. Coin cash-paid message. And the call

1 was made at 11:03 p.m. and lasted for one minute and fifty-
2 three seconds.

3 Q Now, sir, all of those according to the records
4 were made from the phone booth outside Joe's Palm Room that
5 you have just identified here in Government Exhibit No. 16?

6 A That's correct.

7 Q Mr. Isaacs, I am showing you Government Exhibit
8 No. 35 and No. 36 for identification and I ask you if these
9 are records of your company made in the regular course of
10 business?

11 A Yes, they are.

12 (Documents referred to above were marked for
13 identification as Government Exhibits Nos.
35 and 36, Witness Isaacs.)

14 Q (By Mr. Neal) And is it the regular course of
15 your company's business to make those records?

16 A Yes.

17 MR. NEAL: We offer them in evidence. And I
18 show them to counsel for the defendants.

19 MR. BRANSTETTER: I think the records will
20 probably show that when Mr. Neal refers to counsel for
21 defendants he is referring to counsel for Defendant Larry
22 Campbell.

23 MR. NEAL: Yes, or I will show them to all
24 defendants.

25 THE COURT: Yes.

1 MR. BRANSTETTER: Are we to presume, may it please
2 the Court, a standing objection?

3 THE COURT: A standing objection and standing
4 instructions.

5 BY MR. NEAL:

6 Q Now, sir, showing you Government Exhibit No. 35,
7 to expedite this I will ask you if that is not a customer
8 card similar to the ones you have just identified?

9 A Yes, sir, it is.

10 Q And that shows a telephone located outside of
11 the Joe's Palm Room carrying the number JU 4-9692?

12 THE COURT: What was the number?

13 THE WITNESS: JU 4-9692.

14 BY MR. NEAL:

15 Q Is that correct, sir? Is that a phone booth
16 outside of Joe's Palm Room?

17 MR. BRANSTETTER: May it please the Court, let's
18 let the witness look at the records.

19 MR. NEAL: I am leading the witness, but I was
20 doing it to expedite things.

21 MR. BRANSTETTER: May it please the Court --

22 BY MR. NEAL:

23 Q Tell us what that record shows.

24 A This is a record of a telephone service located
25 at Louisville, Kentucky, located at 1227 Magazine Street,

1 listed in the name of Palm Room Liquor House. Telephone
2 number JU 4-9692.

3 Q Now, are you familiar with the geographic area
4 there, sir?

5 A Yes, sir, and it is this location right here,
6 this booth that is in the foreground.

7 Q The witness is pointing to the booth in the
8 foreground outside Joe's Palm Room on Government's Exhibit
9 No. 16. Now, that is the other phone booth to the previous
10 one that just has been described. Is that correct?

11 A Yes, sir.

12 Q Did that phone booth in Government's Exhibit No.
13 16 outside of Joe's Palm Room, did that have the number,
14 what was that number?

15 A JU 4-9692.

16 Q Did it have that number in October, November, and
17 December 1962?

18 A Yes, sir, it did.

19 Q Now, I am showing you Government Exhibit No. 36.
20 I ask you what that is?

21 A This is a record of a long-distance call from
22 Louisville, Kentucky, telephone number 584- or JU 4-9692
23 which is at this location to Nashville, Tennessee, telephone
24 number CY 1-8644 on November 12, 1962. This was a coin cash-
25 paid message. And the call was made at 11:03 and lasted for

1 one minute and thirty-five seconds.

2 Q Is that P.M. or A.M.?

3 A P.M.

4 Q Now, all of these calls you have been giving us,
5 they are all Louisville time, in 1962, which was what time?

6 A Eastern Standard time.

7 Q Eastern Standard time. That would be an hour
8 later than Central time? Is that correct? In other words,
9 if that call was 11:03 Eastern Standard time it would be
10 10:03 Central Standard time?

11 A That's correct.

12 MR. NEAL: Mr. Reporter, would you mark these
13 two as government exhibits?

14 (Documents referred to above were marked for
15 identification as Government Exhibits Nos. 37
and 38.)

16 BY MR. NEAL:

17 Q Now, sir, I show you what has been marked for
18 identification as Government Exhibit No. 37 and Government
19 Exhibit No. 38. I ask you if they are records of your
20 company made in the regular course of business?

21 A Yes, they are.

22 Q And is it the regular course of your company's
23 business to make those records?

24 A Certainly is.

25 MR. NEAL: We offer those exhibits into evidence

1 as Government Exhibits Nos. 37 and 38 and show them to defense
2 counsel.

3 MR. SILETS: Same objection.

4 THE COURT: Same ruling and instructions.

5 MR. ALEXANDER: Does your Honor's ruling apply to
6 all defendants?

7 THE COURT: Yes, sir.

8 MR. ALEXANDER: I'm not making any objections for
9 Mr. Tweel because I understand it applies to all defendants.

End 28 10 THE COURT: Yes.

28A 11 MR. BRANSTETTER: May it please the Court, I
12 would object to Exhibit No. 37. I don't believe it has been
13 sufficiently identified as a part of the records that this
14 gentleman who is now testifying keeps or established in the
15 regular course by this particular witness. Of course, also
16 object on the basis of materiality under the case that we
17 handed the Court and I assume that is also a proper standing
18 objection?

28A End 19 THE COURT: Yes, that is.
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1 THE COURT: Yes, that is a standing objection
2 to which the instructions of the Court will heretofore apply.

3 MR. NEAL: Shall I inquire further or are these
4 admissible in evidence?

5 THE COURT: Well, overrule the objection.

6 (The documents previously marked Government
7 Exhibits Nos. 37 and 38 for identification were
received in evidence.)

8 BY MR. NEAL:

9 Q Would you tell us, looking at Government's
10 Exhibit No. 37, would you tell us what that is, please?

11 A This is a record of telephone service at 1121
12 West Chestnut Street.

13 THE COURT: 1121, what is that address?

14 THE WITNESS: 1121 West Chestnut Street in
15 Louisville, Kentucky.

16 BY MR. NEAL:

17 Q What is located at 1121 West Chestnut Street?

18 A Brown's Guest House, Telephone No. 583-9385.

19 Q Now, did Brown's Guest House have that telephone
20 in October, November, and December, 1953?

21 A That is correct.

22 Q Excuse me. In October, November and December,
23 1962?

24 A That is correct.

25 Q What kind of a phone is that, sir?

- 1 A This is a coin telephone.
- 2 Q Pay phone?
- 3 A That is correct.
- 4 Q It's a pay phone located in Brown's Guest House?
- 5 A It is.
- 6 Q It was so located there in October, November and
7 December, 1962?
- 8 A That is correct.
- 9 Q Now, I show you Government's Exhibit No. 38, I
10 ask you what that is, sir?
- 11 A This is a record of a telephone call made from
12 Telephone No. 583-9385.
- 13 Q Just a moment. I am not too good at numbers.
14 Is that the pay phone located at Brown's Guest House?
- 15 A Yes, sir, it is.
- 16 Q All right, go ahead.
- 17 A To Nashville, Tennessee, Telephone No. CY 1-8644
18 on October the 22nd, 1962, and is a cash paid message, and
19 the call was made at 8:12 P.M. and lasted for one minute and
20 33 seconds.
- 21 Q What was the time of day of that, sir?
- 22 A 8:12 P.M.
- 23 Q P.M. or A.M., sir?
- 24 A P.M., no, I am sorry, it's A.M.
- 25 Q Would you give us the duration?

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1 A These little dots are hard to see.
 2 MR. BRANSTETTER: Could we see it?
 3 MR. NEAL: Would you like to see it?
 4 MR. BRANSTETTER: Yes.
 5 BY MR. NEAL:
 6 Q Was it P.M. or A.M.?
 7 A A.M., the little dot is up on the left side.
 8 Q And what was the duration of this call, sir?
 9 A A minute and 33 seconds.
 10 Q A minute and 33 seconds?
 11 A Yes, sir.
 12 Q I am not sure that my record shows that you gave
 13 us the time of day of this call right here, it is, just for
 14 the record, it's Government's Exhibit 28. Would you give us
 15 the time of the day of that call, please, if you have not?
 16 MR. BRANSTETTER: May it please the Court, the
 17 record shows.
 18 THE COURT: 7:54 P.M.
 19 MR. NEAL: Well, that's fine, I didn't know, I
 20 wasn't sure about that, thank you, sir.
 21 MR. SILETS: Your Honor, if your Honor please, if
 22 Mr. Neal is going to go much longer.
 23 THE COURT: Yes, I was going to inquire if he was
 24 about through with this witness.
 25 MR. NEAL: I believe I am, sir, it may be a

1 matter of two or three minutes, I think I will be through.

2 THE COURT: Well.

3 MR. NEAL: I will certainly try. Would you mark
4 this as Government Exhibit No. 39 and this as Government
5 Exhibit No. 40?

6 (The telephone company records referred to above
7 were marked Government's Exhibits Nos. 39 and
40, Witness Mr. Isaacs, for identification only.)

8 BY MR. NEAL:

9 Q Mr. Isaacs, I show you Government's Exhibit No.
10 39 and No. 40 and ask you if these are records of your company
11 made in the regular course of your business?

12 A Yes, sir.

13 Q And if it was the regular course of the business
14 of your company to make those records?

15 A Yes, sir.

16 MR. NEAL: Offer them in evidence.

17 MR. SILETS: Same objection, your Honor.

18 THE COURT: Same instructions.

19 MR. NEAL: May they be received, your Honor?

20 THE COURT: All right.

21 (The documents previously marked Government's
22 Exhibits Nos. 39 and 40 for identification were
received in evidence.)

23 BY MR. NEAL:

24 Q Now, Mr. Isaacs, I believe this shows the tele-
25 phone number of Ernestine Williams in Louisville, does it not?

1 A Yes, it does.

2 Q And what was that number in October, November
3 and December, 1962?

4 A 636-3698.

5 Q And I believe this is a record of calls from
6 that number on November 14, 1962?

7 A That is correct.

8 Q And there are three calls there, three calls?

9 THE COURT: Let the witness testify.

10 MR. NEAL: Excuse me.

11 BY MR. NEAL:

12 Q Will you tell us where the calls are to, the
13 date, where the calls are to and so forth?

14 MR. BRANSTETTER: May it please the Court, I
15 don't believe this witness testified that he kept that
16 particular record. That appears to be a statement that was
17 previously identified by a witness, I believe, if I am not
18 mistaken.

19 THE WITNESS: We do keep this type of record.

20 THE COURT: Is that a record kept under your
21 supervision?

22 THE WITNESS: This is one of our records.

23 THE COURT: All right.

24 MR. BRANSTETTER: Could I inquire appropriately
25 was this the same?

1 MR. NEAL: No.

2 MR. BRANSTETTER: Paper that was exhibited? It
3 appears to be.

4 MR. NEAL: No, the other one was Ernestine
5 Williams introduced, Ernestine Williams, was her portion,
6 this is the telephone company's portion.

7 BY MR. NEAL:

8 Q Could you tell what is on that bill for Ernestine
9 Williams' telephone bill for the month of November, 1962?

10 A You want me to give the information on all of
11 the calls?

12 Q Just the last three, if you would.

13 A All right, sir. On November the 14th there was
14 a call to Nashville, Tennessee, Telephone No. CY 1-8644.

15 Q And how long was that, sir?

16 A One minute.

17 Q Now, sir--

18 THE COURT: (Interposing) What time was that,
19 does it show?

20 THE WITNESS: 9:09.

21 THE COURT: P.M. or A.M.

22 THE WITNESS: A.M.

23 BY MR. NEAL:

24 Q Would you tell us about the other two calls,
25 please?

1 A Also on November the 14th there was a call to
2 Nashville, Tennessee, Telephone No. CY 1-8644 and that call
3 lasted for one minute and it was made at 11:56 A.M. The
4 next call was on November the 14th, 1962, to Nashville, Ten-
5 nessee, Telephone No. CY 1-8644 and the call lasted for two
6 minutes and the call was placed at 2:01 P.M.

7 Q Now, sir, during all of the year 1962, Louisville,
8 Kentucky, was on what time?

9 A Eastern Standard Time.

10 Q Eastern Standard Time. Now, sir, all the calls
11 I have asked you about were during the fall of 1962, is that
12 correct?

13 A Yes, sir.

14 Q October, November?

15 A Yes, sir.

16 Q Would you tell me whether or not the entire State
17 of Kentucky was on Standard Time in '62, Eastern Standard
18 Time?

19 A Not the entire state. A good portion of the
20 western part of the state remained on Central and is still
21 on Central.

22 Q How about Erlanger, Kentucky, just outside of
23 Cincinnati?

24 A It was on Eastern Standard Time.

25 MR. NEAL: You may examine.

1 THE COURT: All right. Well, let's at this time
2 take a 10-minute recess. Of course, ladies and gentlemen,
3 you have heard the same instructions. Likewise, do not dis-
4 cuss the case.

5 The exhibits are getting so numerous let's do not
6 remove any exhibits from the courtroom except in the custody
7 of the court reporter or the Clerk.

8 (Thereupon, a recess was had.)

End Tk 29 9
Tk 30 fls.

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1 (Thereupon, after recess, court was in session.)

2 (Thereupon, the jury of 12 and four alternates
3 were brought into the courtroom and the following proceedings
4 were had to-wit:)

5 MR. BROWN: If Your Honor please, so that there
6 can be no misunderstanding, I understood the Court to instruct
7 at the start of the trial that any objection made by any
8 defendant would apply to all defendants? Unless counsel
9 objected on some other things? That applies throughout the
10 trial?

11 THE COURT: Yes. Unless an objection would relate
12 specifically to a particular defendant.

13 MR. BROWN: Yes, sir, Your Honor.

14 THE COURT: All right, Mr. Branstetter.

15 CROSS EXAMINATION

16 BY MR. BRANSTETTER:

17 Q Is it Mr. Isaacs, did I get your name, correct?

18 A That's correct.

19 Q And you live where, Mr. Isaacs?

20 A Louisville, Kentucky.

21 Q How long have you lived in Louisville, Kentucky?

22 A Since 1956.

23 Q Are you a part of supervision in the company for
24 which you work?

25 A Yes, I am.

Tk 30*
H2

Isaacs - Cross

2048

- 1 Q What is your job classification or your designation?
- 2 A District Commercial Supervisor.
- 3 Q For the Louisville area or what area?
- 4 A Louisville area.
- 5 Q Limited to the Louisville area?
- 6 A That's correct.
- 7 Q Are you familiar with and know the location of
- 8 each and every public pay telephone booth in Louisville?
- 9 A A whole lot of them, but not all of them, of
- 10 course. I have several thousand.
- 11 Q Your testimony relating to the exhibits that were
- 12 identifying the location of telephone booths, those are
- 13 regular public pay telephone booths, aren't they?
- 14 A All of them are except the Brown Guest House, it
- 15 is semi-public.
- 16 Q Do you know where the one is located in the
- 17 Brown's Guest House?
- 18 A Inside the house. It is not an outdoor booth.
- 19 Q Do you know the physical location?
- 20 A No, sir, I do not. Not of the telephone instrument.
- 21 I know where the house is.
- 22 Q Yes. sir, and did you know that before coming here
- 23 or before the government asked that you find this location?
- 24 A I knew it before coming here.
- 25 Q Do you have anything at all to do personally with

1 the making of the records about which you have testified?

2 A I have supervision over the preparation and
3 maintenance of the records.

4 Q Do you have anything to do with the records about
5 which you have testified?

6 A Yes, sir, I do.

7 Q Did you make any of the entries or supervise the
8 actual entry as being made on any of the records you talked
9 about?

10 A I supervise the work in the business office in
11 which these records are included.

12 Q How many employees are concerned in that particular
13 office where those records are kept?

14 A 192.

15 Q You didn't know the time or the place or the
16 contents of any of these records until they were pulled out
17 and shown to you, did you?

18 A That's correct.

19 Q If there had been a wrong telephone number or
20 wrong telephone numbers on each of the cards handed you,
21 would you have read that number as listed on the card?

22 A I didn't understand your question.

23 Q If there had been a wrong telephone number or
24 numbers listed on each and every exhibit that you read from,
25 would you have read the telephone number as wrongly listed?

30-4 . Isaacs - Cross

2050

1 A I don't know what you mean by wrong.

2 Q I mean if the telephone number had been listed on
3 Exhibit No. 40 instead of CY 1-8644 as 1-8655 would you have
4 read it 1-8655?

5 A I would have read what was on the record.

6 Q What was on the record?

7 A Yes, sir.

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Tk 30

Tk 31
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1 Q Do you know who made any of these calls that you
2 read the records on?

3 A No, sir, it isn't shown on the record.

4 Q You do not know who received a single call you
5 talked about?

6 A No, sir, it isn't shown on the record.

7 Q Did you state whether or not you knew the physical
8 location of each pay telephone station in Louisville?

9 A I said that I did not know where each station was
10 located but I have records that would tell me.

11 Q How long are the records that you read from, the
12 type of record that you read from, normally kept?

13 A Well, they are kept for the life of the service
14 until there is some change made in the service and then a
15 specified period thereafter.

16 Q Now, for example, on Exhibit 38, how long would
17 that record be kept under normal conditions if it had not
18 been pulled out and brought here?

19 A One year.

20 Q One year?

21 A Yes, sir.

22 Q What is the date on the record when the call was
23 made?

24 A October 22nd, 1962.

25 Q Do you know when these records were removed from

1 the record keeping system of the Southern Bell Telephone
2 Company?

3 A Yes, sir.

4 Q When?

5 A In March, 1963.

6 Q March of 1963?

7 A Yes, sir.

8 Q Did you personally remove them?

9 A No, sir.

10 Q Did you personally see anyone remove them?

11 A No, sir.

12 Q Did you know they were removed until they were
13 handed to you by someone?

14 A I knew that they were to be removed and that they
15 were removed.

16 Q Would you, for our benefit, state what the
17 procedure is from a telephone booth, public telephone booth
18 like you speak of, is it necessary on all of these units to
19 dial an operator to get long distance?

20 A Yes, sir.

21 Q If a person dials the operator and gets long
22 distance and states that they are calling from a particular
23 number and gives the wrong telephone number, will there be
24 any notation of that on the record or would the operator
25 know what number it was made from?

1 A It would depend on the type of equipment being
2 used.

3 Q The type of equipment being used here that you
4 testified about.

5 A I don't know that, sir.

6 Q If the last three digits of a telephone number
7 given erroneously it would not show up on your records, would
8 it?

9 A Here again is the type of equipment used and I--

10 Q (Interposing) The type of equipment being used
11 here, sir.

12 A I don't know in this particular case.

13 Q Beg your pardon, sir?

14 A If the wrong telephone number were given by the
15 calling party from a coin telephone under certain conditions
16 where certain equipment is used the operator would know that
17 the calling party was not calling from the number that was
18 given here.

19 Q Would you please answer my question? On the
20 equipment that you testified about, if the last three digits
21 of the phone number were given incorrectly your records
22 would not show that.

23 MR. NEAL: Your Honor, I believe he answered that,
24 that he didn't know.

25 THE COURT: Let him answer, if he knows.

1 Q Did you answer?

2 A I didn't understand your question, sir.

3 Q On the type of equipment that you testified you
4 knew was in each telephone booth or that your records show
5 was in the telephone booths you talked about, if the caller
6 gave the long distance operator the incorrect last three
7 digits of the phone number your records would not show this,
8 would they?

9 A I don't know what type of equipment was used in
10 this particular case.

11 Q What is your classification, what is your title?

12 A District commercial supervisor.

13 Q District commercial supervisor?

14 A Yes, sir.

15 Q Now, have you come up through the ranks, so to
16 speak, and gone through the various promotional stages with
17 your company?

18 A That is correct.

19 Q Did you ever know whether or not under this
20 type of equipment, under this statement that I gave to you
21 with reference to giving the wrong numbers shown?

22 A Well, we have 23 central offices in Louisville and
23 all of them do not operate alike and I am not sure which
24 type office this is.

25 Q And your records do not show?

31-5 . Isaacs - Cross

2055

1 A It doesn't show what type central office it is.

2 Q Does it show whether or not the question--, do
3 your records--, can you answer the question I asked you from
4 your records?

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1 A I say this number is correct.

2 Q Would the Court instruct the witness to answer.
3 I didn't ask him if a number was correct. I asked him if he
4 could determine from his records and answer the question I
5 asked.

6 THE COURT: Answer, yes, answer the question,
7 if you can give an answer. If you cannot, say so.

8 THE WITNESS: I cannot give the answer.

9 BY MR. BRANSTETTER:

10 Q Do you whether or not there is a pay telephone
11 station at Seventh Avenue and Park Avenue in Louisville?

12 A I do not.

13 Q If I handed you a picture for identification,
14 could you tell whether or not there is such a telephone booth
15 at this location?

16 A I don't know where Park Avenue is.

17 Q Could I inquire as to how you knew where the
18 particular ones were that you testified about on direct
19 examination?

20 A Well, the records that were subpoenaed, I looked
21 at them. Went out and visited these locations.

22 Q Who asked you to go out and visit the locations?

23 A Mr. Peters.

24 Q Mr. Peters, who is Mr. Peters?

25 A He is with the FBI.

1 Q Where is he with the FBI?

2 A Louisville, Kentucky.

3 Q How long have you known Mr. Peters?

4 A Well, I have known of him for two or three years,
5 but I had never seen him in person until three or four weeks
6 ago.

7 Q Three or four weeks ago?

8 A Yes.

9 Q Did Mr. Peters call you by phone some considerable
10 time ago?

11 A Yes. Considerable time, I don't know, two weeks
12 or something like that, I reckon.

13 Q Had you talked to Mr. Peters by phone prior to
14 that time?

15 A Yes.

16 Q Do you remember when that was?

17 A Well, possibly a year ago, maybe. Two years,
18 maybe.

19 Q A year to two years ago?

20 A Yes.

21 Q Had you talked to him about this particular matter
22 a year ago?

23 A No, sir, I had not.

24 Q When was the first time you talked to him about
25 this particular matter?

1 A Oh, a week or two ago.

2 Q Did Mr. Peters talk to you about tearing out a
3 telephone from a pay station at Seventh Avenue and Park
4 Avenue?

5 A No, sir.

6 Q Did he ever talk to you about tearing a telephone
7 out or taking it out, removing it completely?

8 A No, sir.

9 Q Do you know whether or not a telephone has been
10 removed since these records were made that you testified
11 about from Seventh Avenue and Park Avenue, a pay phone station?

12 A No, sir.

13 Q Who would give the directions or the order to
14 remove such a telephone?

15 A I could or the district manager or manager.

16 Q Any one of three people could give such order?

17 A That's correct.

18 Q If Mr. Peters asked them to, would they comply
19 with his request or would you have complied with his request?

20 A If it was a court order I would.

21 Q If Mr. Peters asked you, would you have complied?

22 A If he had a court order.

23 Q Did Mr. Peters have a court order when he called
24 you and said that he wanted you to pull certain files or
25 obtain certain files?

1 A There was a subpoena in connection with the
2 records that were withdrawn from the files.

3 Q Did you see the subpoena?

4 A Yes, sir.

5 Q Did Mr. Peters deliver it to you?

6 A No, sir.

7 Q Do you recall who did?

8 A The subpoena for the records that we have looked
9 at today?

10 Q Yes.

11 A No, he did not serve the subpoena on me.

12 Q Didn't serve it on you at all?

13 A No, sir.

14 Q Do you know on whom he did serve the subpoena?

15 A I could look at my records, but I don't know
16 offhand.

17 Q You don't know, but you did personally talk to
18 Mr. Peters about it?

19 MR. NEAL: He didn't say that.

20 THE WITNESS: About the records, no, sir.

21 MR. NEAL: He didn't say that at all. He said
22 he was served with a subpoena and Mr. Peters didn't serve it.

23 MR. BRANSTETTER: I didn't inquire, excuse me.

24 THE COURT: Proceed.

25 BY MR. BRANSTETTER:

1 Q I asked if you did talk to Mr. Peters. I believe
2 counsel misunderstood.

3 A In regard to the subpoena of the records?

4 Q In regard, yes.

5 A No, sir, I did not discuss that with him.

6 Q Did you talk to him about these particular
7 records?

8 A I talked with him in regard to the location of
9 these stations.

10 Q You talked to him about the locations of the
11 stations?

12 A That's correct.

13 Q Where were you when you talked to him about that?

14 A I was in my office at the Community Chest in
15 Louisville, Kentucky.

16 Q When was that?

17 A Oh, a week or two ago.

18 Q Could you be more specific for us, please?

19 A Well, it was between ten days and around ten
20 days ago, I reckon. I don't recall.

21 Q Then what did you and Mr. Peters talk about?

22 A Well, we were going out and look at the locations
23 of these stations that I have just identified.

24 Q And did Mr. Peters go with you?

25 A Yes, sir.

1 Q Did Mr. Peters in talking with you make any
2 notes or make any writings on papers with reference to what
3 you were doing or going to do?

4 A I didn't see him do it.

5 Q Did he make any notes about as you went along
6 as to each of these places that you testified you went?

Tk 32 End
33 fls

7 A I did not see Mr. Peters make any notes.

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1 Q Now, I would like to make specific inquiry as to
2 the first time you talked to Mr. Peters, the date and the
3 year or the month will do, first?

4 A January of 1964.

5 Q 1964?

6 A Yes.

7 Q This was the first time you ever talked to Mr.
8 Peters was by phone or in your office?

9 A I talked with him by telephone and in my office.

10 Q Did he give you a list at that time of phone,
11 public pay phone booths, that he wanted you to check?

12 A No, sir, he did not.

13 Q What was the nature of that particular conversa-
14 tion then?

15 MR. NEAL: Your Honor, I wonder about the rele-
16 vancy of that. I don't see what counsel is driving at. I
17 don't want to cut off cross-examination or even try to but
18 I don't see the relevancy of it and I object to it.

19 THE COURT: Overruled.

20 BY MR. BRANSTETTER:

21 Q Do you recall what he talked to you about?

22 A Yes, sir, he talked about these telephones that
23 were shown in these pictures.

24 Q Did he tell you the nature of the purpose of his
25 requesting you to go check the phone booths' physical locations?

1 A Not specifically.

2 Q Did you know why he was asking you to do this,
3 go to check them?

4 A Well, I knew that it had something to do with the
5 records that had been subpoenaed.

6 Q Do you recall when the subpoena was served or the
7 first knowledge you had of it?

8 A Sir?

9 Q What was the first knowledge you had of the
10 subpoena, what time, what month?

11 A In March, 1963. I am talking about the subpoena
12 of those records.

13 Q Well, you said you talked to Mr. Peters approxi-
14 mately, well, within the last two years preceding this. Was
15 that in reference to this particular matter about which you
16 have testified?

17 A No, sir, it was not.

18 Q And you state now that you don't know whether
19 Mr. Peters told you or some subordinate of yours, some person
20 over whom you have supervision, to remove a pay telephone,
21 take it out of the pay booth at Seventh Avenue and Park
22 Avenue?

23 A I am not familiar with that situation.

24 THE COURT: All right. Anything further from
25 Mr. Isaacs?

1 MR. BRANSTETTER: Just one question.

2 BY MR. BRANSTETTER:

3 Q I would like to hand you what purports to be a
4 photograph of a telephone booth and ask you if you can identify
5 that particular picture and the location of that particular
6 phone booth?

7 A I cannot identify it.

8 THE COURT: All right. Anything further? If
9 not, may Mr. Isaacs be excused? All right. You may be
10 excused, Mr. Isaacs.

11 MR. BERKE: Your Honor, the same rule, reserve
12 cross-examination because obviously we have no--

13 THE COURT: All right.

14 MR. BERKE: That should apply to all witnesses,
15 your Honor.

16 THE COURT: All right.

17 (Witness excused.)

18 MR. NEAL: The government calls Miss Mary K.
19 Reeves.

20 MR. DALE: Raise your right hand, please. Do you
21 solemnly swear that the evidence you will give in this case
22 will be the truth, the whole truth and nothing but the truth,
23 so help you God?

24 MISS REEVES: I do.

25 MR. DALE: Have a seat.

1

MARY K. REEVES,

2

a witness called at the instance of the United States of

3

America, being first duly sworn, was examined and testified

4

as follows:

5

DIRECT EXAMINATION

6

BY MR. NEAL:

7

Q You are Miss Mary K. Reeves?

8

A Yes, sir.

9

Q Miss Reeves, would you speak to the members,

10

ladies and gentlemen of the jury, and speak up loudly enough

11

so we can all hear?

12

THE COURT: Is your name (spelling) R-e-e-v-e-s?

13

THE WITNESS: Yes.

14

BY MR. NEAL:

15

Q It's (spelling) R-e-e-v-e-s?

16

A That's right.

17

Q Where do you live, reside, Mrs. Reeves?

18

A 5316 St. Alban, Detroit.

19

Q St. Alban Avenue, Detroit?

20

A Yes.

21

Q Detroit, Michigan?

22

A Yes.

23

Q How long have you resided there?

24

A Oh, 16 or 17 years.

25

Q You are employed, I believe, as a nurse in Detroit?

1 A Yes.

2 Q Are you acquainted with the Defendant Larry
3 Campbell?

4 A Yes, I am.

5 Q Would you point him out, please?

6 A Sitting over in the corner.

7 Q Well, is this the gentleman I am pointing right
8 here to, this gentleman (indicating)?

9 A Right, yes.

10 MR. NEAL: Let the record show Mrs. Reeves pointed
11 out the Defendant Larry Campbell.

F Tk 3312
Tk 34 fls.

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Tk 34 •
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Reeves - Direct

2067

- 1 Q Now, what is the Defendant Campbell's occupation?
- 2 A I believe he is business agent for the Teamsters.
- 3 Q Business agent for the Teamsters?
- 4 A Yes.
- 5 Q In Detroit?
- 6 A Yes.
- 7 Q What local is that in Detroit?
- 8 A 299.
- 9 Q Local 299?
- 10 A Yes.
- 11 Q And is that the local of which the Defendant Hoffa
- 12 is president?
- 13 A Yes.
- 14 MR. HAGGERTY: We object to that. Slightly leading
- 15 and suggestive.
- 16 THE COURT: Sustained.
- 17 BY MR. NEAL:
- 18 Q Who is president of Local 299?
- 19 A James Hoffa.
- 20 Q Did the Defendant Campbell ever tell you whether
- 21 or not he has relatives in Nashville, Tennessee?
- 22 A Yes.
- 23 Q What relatives or relative?
- 24 A Aunt and uncle and some more I don't remember.
- 25 Q Does he have an uncle in Nashville, Tennessee?

- 1 A Yes.
- 2 Q Pardon?
- 3 A Yes.
- 4 Q Have you met that uncle?
- 5 A Yes, sir, I have.
- 6 Q Do you see him in court now?
- 7 A Yes.
- 8 Q Would you point him out, please?
- 9 A Sitting in front of the door.
- 10 Q Pardon me?
- 11 A There.
- 12 Q This gentleman?
- 13 A Yes.
- 14 Q And what is his name?
- 15 A Thomas Parks.
- 16 Q Pardon me?
- 17 A Thomas Parks.
- 18 Q Have you yourself ever called from Detroit ever
- 19 called the Mattie Mix residence in Nashville, Tennessee?
- 20 A No, I haven't.
- 21 Q Do you know Mrs. Mattie Mix?
- 22 A No, I don't. I met her in the witness room
- 23 yesterday, though.
- 24 MR. SILETS: I can't hear her, Your Honor.
- 25 THE COURT: Yes, speak up more loudly.

1 BY MR. NEAL:

2 Q I believe you said you met her in the witness
3 room yesterday?

4 A Yes.

5 Q Now, would you tell me, sir, I mean, ma'am, what
6 your telephone number was, your home telephone number was in
7 October, November and December, 1962?

8 A 923-8271.

9 Q 923-8271?

10 A Yes.

11 Q Did the Defendant Campbell have access to your
12 telephone in October and November, 1962?

13 A Yes.

14 Q And did he make two telephone calls to Nashville,
15 Tennessee on your phone?

16 A He made several calls.

17 Q Well, did he tell you that he made two calls to
18 Nashville, Tennessee on your phone?

19 A He didn't specify any number of calls.

20 Q Pardon me?

21 A He didn't specify any number of calls.

22 Q Well, let me withdraw that then. You had a
23 conversation with Mr. Campbell after you appeared before the
24 Grand Jury in Nashville?

25 MR. BRANSTETTER: Now, may it please the Court,

1 I assume he is telling the witness what to say.

2 MR. NEAL: I'm asking her.

3 THE COURT: Overrule the objection.

4 BY MR. NEAL:

5 Q Or after you were subpoenaed but before you appeared
6 in Nashville?

7 A Pardon me?

8 Q Did you have a conversation with the defendant
9 Campbell after you were subpoenaed but before you appeared
10 before the Grand Jury in Nashville?

11 A Yes.

12 MR. SILETS: If Your Honor please, this conversation
13 under no theory could be admissible against any other
14 defendant. I say the Court should instruct the jury
15 specifically on this instance inasmuch as the time that this
16 conversation purportedly took place.

17 THE COURT: All right. Ladies and gentlemen, you
18 will not consider any conversation between this witness and
19 Mr. Campbell as to any other defendant other than Mr. Campbell.

20 BY MR. NEAL:

21 Q Now, at that time, Miss Reeves, did Mr. Campbell,
22 the defendant Campbell say anything to you about a telephone
23 call?

24 A No, I don't remember him saying anything about a
25 telephone call.

1 Q Miss Reeves, I want to show you and ask that this
2 be marked for identification as Government Exhibit No. 41.

3 (The telephone company record referred to above
4 was marked Government Exhibit No. 41, witness
Miss Reeves, for identification only.)

5 BY MR. NEAL:

6 Q I show you what has been marked for identification
7 as Government Exhibit No. 41 and ask you if you recognize
8 that.

9 A Seems to be a copy of long distance calls made
10 from my phone.

11 Q Made from your phone to what number?

12 A CY 1-8644.

13 Q And what dates?

14 A 11-1 and 2.

15 Q November 1 and 2 of what year? 1962?

16 A Yes.

17 MR. BRANSTETTER: May it please the Court--

18 MR. NEAL: Pardon me.

19 MR. BRANSTETTER: I don't believe this has been
20 put in evidence and if it was then counsel did not state
21 correctly before when he said this was not the same.

22 MR. NEAL: This is the third one. Hasn't anything
23 to do with the other two.

24 MR. BRANSTETTER: Then I object and ask that
25 the testimony be stricken. There was no placing of it in

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2072

1 evidence.

2 THE COURT: No placing of this in evidence?

3 2nd Tk 34

4 35 fol.

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1 MR. BRANSTETTER: That is correct.

2 THE COURT: The witness identified it as being
3 long-distance calls from her telephone. Does that not identi-
4 fy it?

5 MR. BRANSTETTER: It's not in evidence.

6 MR. NEAL: We offer it in evidence.

7 MR. BRANSTETTER: Than may we see it?

8 MR. NEAL: Sure.

9 THE COURT: All right, all right.

10 MR. BRANSTETTER: We make the objection that we
11 previously made, may it please the Court, with reference to
12 telephone calls and based on the decision we handed the
13 Court.

14 MR. SILETS: Your Honor, of course, I have my
15 standing objection and may I inquire as to the foundation
16 where this document came from, in whose possession it has
17 been, and may I see it?

18 THE COURT: All right, sir.

19 MR. NEAL: Your Honor, she identified this as
20 a copy of her telephone bill for November 1962. I think that
21 is sufficient identification and foundation.

22 MR. SILETS: Your Honor, this doesn't have any
23 name on it, it doesn't have any phone number on it, it has
24 four digits representing a number with no identification as
25 to the city, the exchange, and the date or the month of the

1 bill and perhaps I misunderstood the inquiry and the answer
2 but I got the impression from the witness she said it looks
3 as though it represented some calls on her phone, but my
4 inquiry is mostly where did this come from and in whose
5 possession has it been and is it her document, and short of
6 that under the rulings of evidence I am at a loss to under-
7 stand how it could be admitted in evidence. Of course, I am
8 not waiving my standing objection, your Honor.

9 THE COURT: Yes. Well, I believe the witness
10 identified it. Overrule the objection.

11 BY MR. NEAL:

12 Q This does contain your telephone number, does it
13 not, Miss Reeves, 923-8271?

14 A That's the way they printed it, half on one
15 side and half on the other side.

16 MR. BRANSTETTER: If it please the Court, I
17 didn't hear the witness.

18 THE COURT: Yes, you have to speak out, please.

19 A The number is not all together but part of it is
20 on one side and the other part is on the other side, so I
21 assume that is how they make up the numbers for the bill.

22 Q And that shows it to date, doesn't it, or for a
23 period? Well, look down to the bottom.

24 A 11-62.

25 Q Eleventh month, 1962?

- 1 A That's what it says.
- 2 Q Yes. And that contains -- what does that show
- 3 with respect to long-distance telephone calls, now?
- 4 A It shows that there were two calls made from my
- 5 number.
- 6 Q Yes. Two calls made from your phone on what date?
- 7 A 11-1 and 2.
- 8 Q November 1 and 2?
- 9 A Yes.
- 10 Q November 1st and 2nd in 1962?
- 11 A Yes.
- 12 Q To what number, to what city and number?
- 13 A To Nashville, Tennessee, area 615, CY 1-8664.
- 14 Q CY 1-86?
- 15 A 644, I am sorry.
- 16 Q CY 1-8644?
- 17 A Yes.
- 18 Q And you didn't make those calls, did you?
- 19 A No.
- 20 Q Now, Miss Reeves, I ask you whether or not at
- 21 any time the Defendant Campbell told you he made those calls
- 22 to Nashville or he made these calls appearing on your bill,
- 23 put it that way?
- 24 A Not those same two, he said he had made calls to
- 25 Nashville on occasions inquiring about his sister, but he

1 didn't specify any number of calls that he had made.

2 Q In other words, he didn't say these particular
3 calls but he said he had made calls to Nashville on this
4 phone?

5 A That's the first time I remember seeing that
6 special bill.

7 Q Now, Mr. Campbell, the Defendant Campbell, uses
8 your phone?

9 MR. BRANSTETTER: May it please the Court, he is
10 making statements, "The Defendant Campbell uses your phone."

11 Q Does Mr. Campbell --

12 MR. BRANSTETTER: (Interposing) The Court has
13 instructed counsel not to do that.

14 THE COURT: Yes. Refrain from leading questions.

15 BY MR. NEAL:

16 Q Does Mr. Campbell, the Defendant Campbell, pay
17 your telephone bill?

18 A Yes.

19 Q And if there is a long-distance call in there
20 that he has not made what does he do?

21 A Usually nothing, he assumes, I suppose, that I
22 had the right to call because it was my phone.

23 Q I beg your pardon?

24 A When -- I beg your pardon. Would you restate
25 your question?

1 Q My question was, Miss Reeves, if there are long-
2 distance telephone calls on your bill that the Defendant
3 Campbell pays and he did not make them, does he bring them
4 to your attention?

5 MR. BRANSTETTER: Now, may it please the Court,
6 this is an improper way to state this.

7 THE COURT: Yes.

8 MR. BRANSTETTER: He is making two preparatory
9 statements that she would have to assume to be correct before
10 she could even hope to answer the third.

11 THE COURT: Sustain the objection.

12 MR. NEAL: Your Honor, I laid the foundation.
13 Well, I will rephrase the question.

14 BY MR. NEAL:

15 Q You stated that the Defendant Campbell pays your
16 telephone bill?

17 A Yes.

18 Q And that includes long-distance telephone calls?

19 A Whatever is on the bill.

20 Q Now, he told you, according to your testimony,
21 that he made calls to Nashville, Tennessee, but he didn't
22 specify the call?

23 A No specification.

24 Q And when did he tell you he made these calls?

25 A I don't remember exactly. Do you mean a date or

1 something?

2 Q Yes.

3 A I don't remember.

4 Q When did he tell you he had made calls to Nash-
5 ville over your telephone?

6 A I don't remember a date, sir.

7 Q Pardon me?

8 A I don't remember a date.

9 MR. BRANSTETTER: If it please the Court, we
10 can't hear the witness at all.

11 THE COURT: Please speak out a little more loudly,
12 Miss Reeves. I realize it's a large room but speak out so
13 everyone can hear you.

14 A I said I don't remember a specific date.

15 Q Well, now, to refresh your recollection, Miss
16 Reeves, you testified before the Grand Jury, I believe?

17 A Yes.

18 Q And were you --

19 MR. BRANSTETTER: (Interposing) May it please --

20 Q (Interposing) Were you asked --

21 MR. BRANSTETTER: (Interposing) May it please --

22 could I ask that counsel restate the question?

End 35
36 fls

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1 Q I said to refresh your recollection you testified
2 before the Grand Jury, did you not?

3 MR. BRANSTETTER: May it please the Court, the
4 Court has ruled on this previously. I think under Rule 6
5 counsel knows and the Court knows that this type of procedure
6 is not proper. That there can be no disclosure of Grand
7 Jury minutes without the prior approval of the Court. The
8 Court ruled several times this morning counsel could not
9 proceed in this fashion. He nevertheless insists on doing
10 so and we think he is doing so deliberately to try to
11 prejudice this matter before the jury.

12 MR. NEAL: I believe the Court permitted me to
13 proceed in this manner this morning. I am attempting to
14 refresh this witness' testimony.

15 THE COURT: Did I understand you didn't recall
16 the dates?

17 THE WITNESS: Yes, sir.

18 THE COURT: Overrule the objection.

19 MR. BRANSTETTER: May it please the Court, I
20 respectfully request, I did not hear the witness say that she
21 had exhausted any recollection at all.

22 THE COURT: She said twice that she did not
23 recall when he told her about any dates of having made calls
24 to Nashville.

BY MR. NEAL:

25 Q I ask you, ma'am, you testified before the Grand

1 Jury I believe on January 31, 1963. Is that correct?

2 Approximately that date?

3 A I suppose so. I don't exactly know.

4 Q You testified before the Grand Jury?

5 A I testified before the Grand Jury.

6 Q At Nashville, Tennessee?

7 A Yes.

8 Q In 1963?

9 A Yes.

10 Q And I believe you testified at that time to
11 refresh your recollection, did you not--

12 MR. BRANSTETTER: (Interposing) May it please
13 the Court, I think the appropriate method to handle this
14 unless the Court is hereby ruling that the jury may have
15 access to this is for the counsel to hand it up to the
16 witness and let the witness look at what she purported to
17 testify to and then let him ask her a question and say now
18 is your recollection refreshed. I have never seen any other
19 procedure.

20 THE COURT: All right. May the Court see the
21 transcript?

22 MR. NEAL: Yes, sir.

23 THE COURT: What portion of this are you--, this
24 page?

25 MR. NEAL: The portion of the page and the next page.

1 THE COURT: Will you mark the portion that you
2 desire to proceed on?

3 MR. NEAL: Yes.

4 MR. BRANSTETTER: May it please the Court, I have
5 a United States Supreme Court case on this particular matter
6 that I would like to mention.

7 THE COURT: All right. Will you give me the
8 citation?

9 MR. BRANSTETTER: The citation is Putnam versus
10 United States 162 U. S. 687 at Page 695. Wherein it is
11 stated that the transcript of prior testimony by a witness
12 is not allowed to be used to refresh recollection because it
13 is not contemporaneous with the events testified about.
14 This, may it please the Court, would seem to be an effort to
15 prove a prior inconsistent or consistent statement as the
16 case may be.

17 THE COURT: Yes.

18 MR. NEAL: Your Honor, two pages I want to direct
19 the witness' attention to, Page No. 35 and Page No. 37.

20 THE COURT: Just a moment, please.

21 MR. NEAL: I would like to point out, Your Honor,
22 that this is the situation in which I think the Government
23 should be given some leeway to lead this witness.

24 THE COURT: I believe I will sustain the objection
25 at this time.

1 BY MR. NEAL:

2 Q Miss Campbell, I would like to ask you again what,
3 if anything--, or Miss Reeves, what if anything did the
4 Defendant Campbell say to you about the calls on your bills
5 to Nashville I have just asked you about?

6 A Well, Mr. Campbell didn't really just say anything
7 about them. I assumed that Mr. Campbell made the calls
8 because they were on the bills and he paid the bills and so
9 I really did not question him about them too much.

10 Q He did not mention these calls to you at any time,
11 directly or indirectly?

12 A Not just say, walk up to me and say, "I made a
13 call", no.

14 Q When you were subpoenaed to appear before the
15 Grand Jury did you talk to--

16 MR. BRANSTETTER: (Interposing) May it please
17 the Court, again counsel is cross examining his own witness
18 and seeking to I think, seeking to impeach his own witness
19 and we think this is highly improper.

20 THE COURT: Sustained. Sustain the objection.

21 MR. NEAL: Your Honor, I didn't get the question
22 out.

23 BY MR. NEAL:

24 Q Did you talk to Mr. Campbell around the time you
25 were subpoenaed for Grand Jury testimony in Nashville?

1 A Around the time?

2 Q Yes.

3 A Yes.

4 Q And did you ask him why you were coming to
5 Nashville or if he knew why you were coming to Nashville?

6 A Yes.

7 Q And what did he state?

8 A In exact words, I don't know.

9 Q No. In substance? Just in substance what did
10 he state?

11 A I believe he said that it might have had something
12 to do with some calls that were made from my number.

13 Q Had something to do with some calls that were
14 made from your number?

15 A Yes.

16 MR. NEAL: No further questions.

17 MR. BRANSTETTER: Do I understand counsel to say
18 no further questions?

19 MR. NEAL: Yes.

20 THE COURT: All right.

21 CROSS EXAMINATION

22 BY MR. BRANSTETTER:

23 Q How long have you known Larry Campbell, please?

24 A Ten or eleven years.

25 Q And you are a registered nurse, are you not?

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I am a licensed practical nurse.

2

Q

Licensed practical nurse, how long have you been

3

a nurse?

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About twelve years.

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End
Tk 36

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- 1 Q About 12 years?
- 2 A Yes.
- 3 Q Have you during this period of time attempted
- 4 to help many people or work in the field of mental illnesses?
- 5 A Not too often.
- 6 Q Have you attempted to help a relative of Larry
- 7 Campbell's in this particular area of medicine or treatment?
- 8 A Yes.
- 9 Q Specifically does Mr. Campbell have or did Mr.
- 10 Campbell have a sister that had been confined to a mental
- 11 institution?
- 12 A Yes.
- 13 Q State whether or not you spent some time and,
- 14 if so, the amount of time assisting to what I will refer to
- 15 as rehabilitating her or assisting her in getting her out of
- 16 the mental institution?
- 17 A Well, I spent quite a bit of time with her, I
- 18 don't know exactly how much time I spent with her.
- 19 Q I mean was it over some period of months or days
- 20 or years?
- 21 A Oh, it was possibly over a year, I don't know.
- 22 Q Over a year?
- 23 A Possibly.
- 24 Q Yes. And this was--where was she confined?
- 25 A To the Northville State Hospital, Northville,

1 Michigan.

2 Q In Michigan?

3 A Yes.

4 Q And were you, through your efforts and whatever
5 other efforts that may have been involved, able to get her
6 out?

7 A Yes, I was.

8 Q Do you know where she went when she left Michigan?

9 A Yes.

10 Q Did she go to Nashville, Tennessee?

11 A Yes, she did.

12 Q Is she now living in Nashville, Tennessee?

13 A Yes.

14 Q Did you make many phone calls, long distance
15 and otherwise, with reference to assisting this person?

16 A Yes.

17 Q Do you know how long it has been since you talked
18 to--strike that--excuse me just one moment, your Honor.

19 Do you know that Larry Campbell has made many
20 phone calls or phone calls from your telephone to his sister
21 or about his sister?

22 A I wouldn't say that I knew that he made many, I
23 know that he made some because most every time he walks in
24 the house he uses the phone for his work and otherwise, so
25 I don't just listen in to his calls or anything, so I couldn't

1 say.

2 Q You couldn't say?

3 A As to how many or when.

4 Q But you do know that he has made calls in which
5 he had reference to his sister's name?

6 A Yes.

7 Q And he has told you that he has called his sister
8 on occasions?

9 A Yes.

10 MR. BRANSTETTER: Long distance. Thank you.

11 THE COURT: Any further questions? All right.

12 May this witness be excused?

13 MR. NEAL: I have one or two on redirect, your
14 Honor.

15 REDIRECT EXAMINATION

16 BY MR. NEAL:

17 Q Miss Reeves, you say you have made calls with
18 reference to the Defendant Campbell's sister?

19 A Yes.

20 Q And where were those calls to?

21 A To Nashville.

22 Q What number?

23 A I don't know their number.

24 Q Was there ever a Mattie Mix residence?

25 A I don't know Mattie Mix's number.

1 Q Did you ever make a call to CY 1-8644?

2 A No, I never made a call to CYpress, whatever--

3 Q (Interposing) Do you have any idea who lives
4 at CY 1-8644?

5 MR. BRANSTETTER: May it please the Court, I
6 rather doubt if she has ideas on this matter.

7 MR. NEAL: Let's get them, let's see.

8 THE COURT: Overrule your objection.

9 BY MR. NEAL:

10 Q Do you have any idea who lives at the residence
11 that has the No. CY 1-8644?

12 A I think you told me several times that that was
13 Mattie Mix's residence.

14 Q You never called there in regard to the Defendant
15 Campbell's relatives?

16 A No, not to my knowledge.

17 MR. BRANSTETTER: No further questions.

18 MR. NEAL: No further questions.

19 THE COURT: All right. May this witness be
20 excused?

21 MR. SILETS: Your Honor, the same instruction
22 will apply to this witness' testimony?

23 THE COURT: Yes.

24 (Witness excused.)

25 MR. NEAL: We will call Mr. Schneider.

1 MR. DALE: Raise your right hand, please. Do
2 you solemnly swear that the evidence that you will give in
3 this case shall be the truth, the whole truth, and nothing
4 but the truth, so help you God?

5 MR. SCHNEIDER: I do.

6 MR. DALE: Have a seat, sir.

7 ARTHUR H. SCHNEIDER,
8 a witness called at the instance of the United States of
9 America, being first duly sworn, was examined and testified
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. NEAL:

13 Q Would you state your name, please, sir?

14 A Arthur H. Schneider.

15 Q Arthur H. Schneider. Where do you work, Mr.
16 Schneider?

17 A Michigan Bell Telephone Company.

18 Q I believe that you and I went over some records
19 of yours, when was it, last night?

20 A That is quite correct, sir.

21 Q The records of your company, that is.

22 A That's right.

23 Q How long have you been employed by the Michigan
24 Bell Telephone Company?

25 A I've been with them 16 years.

1 Q And in that 16 years would you give us--well,
2 tell us what your position now is?

3 A I am the accounting manager whose area is the
4 billing of the Detroit exchanges.

5 Q Have you had any work or any supervision in the
6 procedure of placing calls, recording calls and so forth?

7 A Yes, sir.

8 Q Pardon me?

9 A Yes, sir.

10 Q Has that been part of your job?

11 A Currently no, but through my experience.

12 Q In your 16 years?

13 A Right, sir.

14 Q What other aspects of the telephone business
15 have you worked for?

16 A Well, I have been a commercial manager in various
17 offices, I have been connected with the directory department,
18 currently my main job is the planning and analysis of con-
19 verting our present billing system to computer operations.

20 Q And you have worked in billing and that sort of
21 thing?

22 A Yes.

23 Q Records, telephone records?

24 A That's right, sir.

25 Q I believe you said you have had the procedure on

1 placing calls. Have you had experience and knowledge in the
2 operations of the telephone operators?

3 A Yes, sir.

4 Q How they work and so forth?

5 A Yes.

6 Q Now, Mr. Schneider, are you the custodian of the
7 records of your company?

8 A That is within the jurisdiction of my department,
9 yes.

10 Q You are the--

11 A (Interposing) The accounting department of the
12 comptroller's operation has the responsibility of custodian-
13 ship of various records.

14 MR. NEAL: Now, Mr. Reporter, would you mark
15 this as Government's Exhibit No. 42, Government's Exhibit
16 No. 43, Government's Exhibit No. 44 and Government's Exhibit
17 No. 45?

18 (The telephone company records referred to above
19 were marked Government's Exhibits Nos. 42, 43,
20 44 and 45, Witness Mr. Schneider, for identifi-
21 cation only.)

22 BY MR. NEAL:

23 Q The court reporter ask that you spell your name.
24 Would you spell that?

25 A (Spelling) S-c-h-n-e-i-d-e-r.

Q Mr. Schneider, I hand you what has been marked
in this case as Government's Exhibit Nos. 42 through 45, 1

1 believe, and I ask you, sir, if those are records of your
2 company?

3 A Yes, they are.

4 Q Are those records made in the regular course of
5 business?

6 A Yes.

7 Q And is it the regular course of your company's
8 business to make those records?

9 A Beg your pardon?

10 Q Is it the regular course of your company's
11 business to make those records?

12 A Yes, sir.

13 Q At or about the time of the events described
14 thereon?

15 A Yes, sir.

16 Q And to keep those records in its file?

17 A Yes.

18 MR. NEAL: We offer Government's Exhibits 42
19 through 45 into evidence and show them to defense counsel.

End Tk 37 20
Tk 38 fls.

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1 MR. SILETS: Same objection, Your Honor.

2 THE COURT: Same ruling and instructions.

3 MR. BRANSTETTER: May it please the Court, the
4 records show that the proposed exhibits were handed to me
5 representing Defendant Campbell but I note that there may be
6 others that might be interested, so I'm handing them to other
7 counsel for other defendants.

8 THE COURT: Yes, sir.

9 MR. SILETS: Your Honor, I didn't hear whether
10 this witness had testified that these were the entries that
11 were made under his supervision, was that question asked and
12 that answer given?

13 BY THE COURT:

14 Q Were these records kept or made under your
15 supervision?

16 A Not directly, sir.

17 Q Well, in what manner were they?

18 A These are customer records maintained in the
19 various business offices where those accounts are handled.

20 Q Well, do you have supervision over those offices?

21 A No, sir, I do not.

22 MR. BRANSTETTER: We, of course, object to their
23 admissibility.

24 MR. NEAL: Your Honor knows it is not required
25 of the business entry hearsay rule that somebody be on the

1 stand who has direct supervision over the making of these
2 records. If he can testify from his knowledge in the 16
3 years in the telephone company that these are the records of
4 the telephone company made and kept in the regular course of
5 business and it is the regular course of business to make
6 and keep these records. Of course, we will bring somebody
7 else down if Your Honor thinks that is necessary, but I
8 certainly cannot see it under the business entry hearsay
9 rule and I submit to the Court that it is not.

10 MR. BRANSTETTER: May it please the Court, the
11 reason that we raise this objection particularly is that
12 there is considerable amount of handwriting on these records
13 as well as other types of entries and we have not been faced
14 with this specific type of thing before as I recall.

15 MR. NEAL: Your Honor, I'm offering these merely
16 for the customer cards to show these certain--, these cards
17 carried certain numbers or carried them in October and
18 November and December, 1962. The writing is immaterial to
19 me if that is what the objection is.

20 THE COURT: What do you say for the defense?

21 MR. BRANSTETTER: I think we representing a
22 client must object to their admissibility on two grounds.
23 One, may it please the Court, that the records are totally
24 inadmissible just as all the others under the ruling that has
25 been handed the Court and the Court has stated we believe a

1 standing exception. And also they have not been properly
2 identified by this witness in accordance with the business
3 entry rule of the Federal Statutes.

4 MR. NEAL: Your Honor, I can only again cite the
5 statute, 28 U. S. C. 1732(a) and that provides that the
6 foundation must be merely whether the witness knows that
7 these were records the company made and kept in the regular
8 course of business and if it is a regular course of business
9 to make such records or memorandum of the event or trans-
10 action shortly after its occurrence or reasonable time
11 thereafter and it specifically says that all other matters
12 go to the credibility and the weight.

13 THE COURT: Well--

14 MR. SILETS: (Interposing) Your Honor, if the
15 Court please, I see it is a later hour, if the Court desires,
16 I think the Court should pay some heed to that Grayson case
17 I cited earlier today and I think that might indicate to the
18 Court that it is not enough that it was kept in the--

19 THE COURT: Do you have the citation of that
20 again? I made a note of it at the time.

21 MR. SILETS: 166 F. 2d 863. And also I refer to
22 United States versus Rappy, 157 Fed. 2d 966.

End
Tk 38

Tk 38A
f. 1.

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1 THE COURT: All right, gentlemen, it is almost
2 time for adjournment. The Court will want to do some further
3 research upon this matter. So, ladies and gentlemen, I am
4 going to excuse the jury at this time for the evening. Do
5 not discuss the case or let anyone talk to you and observe
6 the same instructions the Court has heretofore given to you.
7 All right, the jury may be excused.

8 (Thereupon, the jury of twelve and four alternates
9 were excluded from the courtroom.)

10 MR. NEAL: May I inquire of this witness further
11 a few questions, your Honor?

12 THE COURT: All right.

13 BY MR. NEAL:

14 Q Mr. Schneider, are you familiar with the customer
15 cards, customer record cards, of your company?

16 A Yes, sir, I am.

17 Q And have you worked with them many times?

18 A Yes, sir.

19 Q Are you familiar with the appearance, entries,
20 and so forth of the cards?

21 A Yes, sir.

22 Q Now, are you familiar with the purposes of the
23 cards?

24 A Yes, sir.

25 Q I believe you said you were the custodian of these

1 cards?

2 A Yes, sir.

3 Q Now, sir, I show you Government Exhibits No.
4 42, No. 43, No. 44, and No. 45 and ask you if those
5 customer cards are identical in form, method of entries,
6 entries, and so forth of the cards of your other customer
7 cards of your company with which you are familiar?

8 MR. HAGGERTY: This man did not testify he was
9 the custodian.

10 THE COURT: That is what I was going to ask.

11 MR. NEAL: I believe he did.

12 THE WITNESS: No, sir, not of these particular
13 records. I indicated that these are kept in the various
14 business offices throughout the city or state where these
15 accounts are operated.

16 BY MR. NEAL:

17 Q Well, do you have general supervision of the
18 custody of these records?

19 A Only from a billing aspect.

20 Q Pardon me?

21 A From a billing aspect, yes.

22 Q What does that mean?

23 A These are the actual records made at the time
24 the customer makes application for service as a result from
25 this card an order is issued which is a duplicate of this

1 card which we in turn bill the customer from.

2 Q So, you use that card then to bill him?

3 A That's right.

4 Q It comes into your possession?

5 A We use a duplicate of this card.

6 Q Duplicate of those cards?

7 A Yes, sir.

8 Q So, then, the duplicate of those cards are in
9 your possession?

10 A Yes, sir.

11 Q Duplicates of those very cards are in your pos-
12 session and you use them?

13 A Right. This is the billing.

14 MR. SILETS: May I ask him a few questions, your
15 Honor?

16 MR. NEAL: Just one moment.

17 BY MR. NEAL:

18 Q Are those cards identical to the customer cards
19 of your company that you are familiar with and worked with
20 before?

21 A Yes, sir.

22 MR. NEAL: Your Honor, I submit that is the
23 proper foundation of any case, but I will cite your Honor
24 some cases. First, of course, Hoffman versus Palmer.

25 THE COURT: I beg your pardon?

1 MR. NEAL: Hoffman versus Palmer, it is not on
2 point, of course, but it contains the discussions of the
3 history and background of the business exception to hearsay
4 rule 318 U. S. 109.

5 I say, I don't cite that as being on point, it is
6 not on point.

7 THE COURT: All right.

8 MR. NEAL: Eddleson versus Metropolitan Life
9 Insurance Company, 164 F. 2nd, 660 and 667.

10 United States versus Fineberg, that might be
11 helpful, 140 F. 2nd, 592.

12 THE COURT: 14592?

13 MR. NEAL: 140 F. 2nd, 592. And Moore-Ulm,
14 (spelling by Mr. Neal) U-l-m, versus Moore-McCormick Lines,
15 Inc., 115 F. 2nd, 494, and I do remember, your Honor, in
16 going over this matter at various times back in the back of
17 the annotations of the United States Code, Annotated, on this
18 subject, there are cases that we can find for your Honor that
19 hold that records may be authenticated and foundation laid
20 for business records under this exception even though everyone
21 in the company is dead and gone. If there is someone who can
22 testify as this man has testified, Number One, and there are
23 cases on this, your Honor, I will be happy to find them for
24 you.

25 Number One, if the records are in appearance

38A - 5

Schneider - Direct

2100

1 business records which is very important. If, Number Two,
2 the man, a witness can testify that he is familiar with the
3 books of that company although he may not at the time be
4 a member of the company, the company may be extinct or
5 defunct and that he is generally familiar with the operations
6 of the company and the records of the company with which he
7 is familiar are similar to the records he has kept and has
8 in his hand are those sought to be introduced. Of course,
9 the government can call enough people down here to authenti-
10 cate those records, there is no question about that.

End 38A
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1 THE COURT: All right. Mr. Silets, you may
2 proceed.

3 CROSS EXAMINATION

4 BY MR. SILETS:

5 Q Mr. Schneider, you testified that these records
6 are kept in the regular course of business?

7 A Yes, sir.

8 Q That is to your own personal knowledge.

9 A Yes, sir.

10 Q Now, to your own personal knowledge were the
11 entries made on this card made in the regular course of
12 business? Now, this is to your own knowledge, sir.

13 A The entries that are made on the card are normal
14 in the course of business. I have no reason to doubt, though,
15 they are not.

16 Q Sir, I am asking you if you have knowledge of
17 whether these particular entries were made in the regular
18 course of business.

19 A Personal knowledge, no, sir.

20 Q You do not?

21 A (Witness moves head from side to side.)

22 MR. SILETS: Your Honor, I submit that he has
23 now stated within the framework of Section 1732 that he has
24 no knowledge that they were made in the regular course of
25 business. What Mr. Neal is overlooking is that there are

1 two steps in this program. One that the custodian who is
2 bringing them is stating that they are kept in the regular
3 course of business and, two, most important fact is that
4 the entries themselves were in fact made in the regular
5 course of business and it was the regular course of business
6 to make such entries, and, thirdly, that they were made at
7 or about the time indicated on the records.

8 Now, this man has no knowledge about that. He
9 may be a custodian, and I am not even sure he is that.

10 BY MR. SILETS:

11 Q Are you a custodian of those precise documents
12 you have in your hand?

13 A Not these precise documents.

14 MR. SILETS: He doesn't even fit in the other
15 aspect of it either.

16 MR. NEAL: Your Honor, he said that he was
17 custodian of duplicates, that he used duplicates. Now, what
18 Mr. Silets failed to point out to Your Honor is that the
19 personal knowledge of the witness is not by express wording
20 of the statute required as a foundation.

21 I'd like to cite to Your Honor the case of
22 United States versus Martin, 167 F Supp. 301, particularly
23 Page 302, Northern District of Illinois 1958. I am quoting.
24 "The purpose of this statute is to create an exception to
25 the hearsay rule. Its basis was to facilitate admission of

1 systematic records which evidence has shown to be trustworthy
2 as routine reflection of day to day operations of business
3 and to permit the introduction of these records without
4 identifying, locating and calling as witnesses those who kept
5 the records. The statute has been liberally construed but
6 it does not cover records which records are kept, which are
7 outside of the regular course of business or records kept
8 by persons outside of the business."

9 And I will state to Your Honor again that there
10 are, that the effect that these records have the appearance
11 of business records. The fact that this man uses these
12 records or duplicates in his day to day work for billing
13 purposes and the fact that he can state that these were made
14 in the regular course of business and kept in the regular
15 course of business is sufficient.

16 THE COURT: All right.

17 MR. SILETS: Your Honor, I have another matter.

18 THE COURT: All right. Yes, sir, Mr. Silets.

19 MR. SILETS: Your Honor, again we are, Mr. Dorfman
20 has been confronted with a long array of witnesses, none of
21 whom the government has indicated in the very slightest have
22 anything to do with Mr. Dorfman, not one spoken word, not
23 one written document, has been introduced.

24 I think this is now the third day of the trial
25 to tie Mr. Dorfman into anything that has gone on and that

1 has been presented for this jury. This again, Your Honor, is
2 sheer prejudice to Mr. Dorfman. No matter what kind of
3 cautionary instruction the Court has been giving, and I must,
4 as an aside here, state that the cautionary instruction
5 originally given has not been repeated by the Court in full
6 each time.

7 This jury cannot compartmentalize, no human mind
8 can do that. Your Honor, I move for a mistrial on behalf
9 of Mr. Dorfman and for a severance and a trial separate and
10 apart from all other defendants.

11 There is no conceivable way that this jury can
12 keep separate in its mind all of the testimony which has been
13 admitted by the Court against single defendants other than
14 Mr. Dorfman, nor has the government given any indication how
15 it ever attempts or will attempt to tie Mr. Dorfman into
16 these other counts.

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1 MR. ALEXANDER: On behalf of the Defendant Tweel
2 we adopt that motion.

3 MR. NEAL: We make a promise, your Honor, we will.

4 MR. BROWN: We adopt the same motion on behalf
5 of the Defendant King, if your Honor please.

6 MR. SCHIFFER: Same motion on behalf of Mr. Parks.

7 MR. HAGGERTY: Same motion, may it please the
8 Court, on behalf of the Defendant Hoffa.

9 THE COURT: All right.

10 MR. NEAL: May I cite one more case to your Honor?
11 I think this is specifically on point with respect to the
12 business entries, it's United States vs. Olivo.

13 THE COURT: Before we leave the present matter,
14 the Court is of the opinion that the motions for mistrial
15 and motions for severance on behalf of each defendant should
16 be overruled.

17 MR. NEAL: Does the Court desire to have the
18 citation of this case?

19 THE COURT: Yes.

20 MR. NEAL: It's United States vs. Olivo (spelling)
21 O-l-i-v-o, 278.

22 THE COURT: What?

23 MR. NEAL: 278 F. 2d 415 and specifically at
24 Page 417. I'd like to read to your Honor that. It says
25 this, "Specifically, appellant's objection is grounded upon

1 the fact that the witness who testified concerning the way-
2 bill and its preparation did not actually prepare it himself
3 nor did he directly supervise its preparation. Rather, Mr.
4 Dillman, Spector's, Newark terminal manager, testified to the
5 company procedures concerning preparation of waybills in
6 general and indicated that they were prepared at the point of
7 origin within the Spector Transportation System. Where
8 Newark was the point of origin they were prepared under his
9 supervision, but since this shipment had originated with
10 another carrier it was waybilled by Spector when delivered
11 to it at Peoria, Illinois. Extensive testimony was taken
12 from Dillman concerning the preparation, use and billing
13 procedures connected with Spector waybills. We are asked
14 to hold that this waybill is inadmissible under the Business
15 Records Act BRA since no official or employee of the Spector
16 System at Peoria testified regarding these matters. We are
17 not prepared to place such stringent restrictions on this
18 Act, for it was intended to eliminate the technical require-
19 ment of proving the authenticity of records and memoranda
20 by the testimony of the maker. The Supreme Court has said
21 that the Federal Business Records Act "Should of course be
22 liberally interpreted so as to do away with the anachronistic
23 rules," the Silets rule, "which gave rise to its need and at
24 which it was aimed."

25 MR. SILETS: Well, your Honor, the Silets rule

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39A - 3 •

Schneider - Cross

2107

1 then is one which the Congress, in its wisdom, has adopted
2 Section 1732 and this witness has not under this case even
3 stated under oath that he has personal knowledge of the pro-
4 cedures that were followed in the preparation of these docu-
5 ments.

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Tk 40 fls.

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1 MR. NEAL: May I cite one more case, Your Honor.
2 United States versus Mary Chapman Scott, 305 F 2d 121,
3 Third Circuit, 1962. Specifically at Page 124 wherein the
4 Court states that the fact that the witness neither prepared
5 the reports nor supervised their preparation did not affect
6 their admissibility.

7 THE COURT: All right.

8 MR. SCHIFFER: Your Honor, not to be completely
9 amiss with reference to the witness, Ernestine Williams,
10 would you kindly permit the defendant Parks to reserve cross
11 examination? We believe we may want her back.

12 THE COURT: Ernestine Williams?

13 MR. SCHIFFER: Yes, sir.

14 THE COURT: All right, do you desire to have her
15 back in the morning?

16 MR. SCHIFFER: Not in the morning, Your Honor, but
17 we'll find out sometime during the course of tomorrow when
18 we probably will need her.

19 MR. REDDY: I think she has gone, Your Honor.

20 MR. BRANSTETTER: May it please the Court,
21 several counsel reserved cross examination.

22 MR. HAGGERTY: We reserved cross examination.

23 MR. REDDY: I don't believe so as to each witness,
24 Your Honor. We held those here that they asked us to hold.
25 Now, if they want each witness held, I think they should

1 announce it at the time.

2 MR. SCHIFFER: I'm sure the other witness is on
3 the record as to reservation.

4 MR. REDDY: If they want her back, we can get
5 her back on reasonable notice.

6 MR. BRANSTETTER: May it please the Court, I have
7 handed to the marshal the material that I stated I would
8 hand up to the Court sometime today. It is a photocopy.
9 There are some markings. I have handed government counsel
10 a like copy.

11 THE COURT: All right, is there anything further
12 this afternoon? If not, let's adjourn court until nine
13 o'clock tomorrow morning.

14 (Thereupon, at 4:45 o'clock p. m., court was
15 adjourned until nine a. m. January 30, 1964.)

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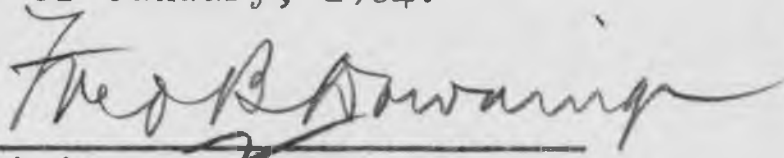
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REPORTER'S CERTIFICATE

I, Fred B. Downing, Official Court Reporter for the United States District Court, for the Eastern District of Tennessee, Southern Division, at Chattanooga, Tennessee hereby certify that Richard Smith and John E. Hamlin, court reporters, in accordance with stipulation of counsel for the parties filed in this case, recorded by machine shorthand the proceedings had in open court in the above styled case on January 29, 1964; and that said proceedings were reduced to typewriting under my supervision; and that the foregoing transcript is a true and correct transcript of the said proceedings to the best of my knowledge.

This the 29th day of January, 1964.


Official Court Reporter

Hoffa

IN THE DISTRICT COURT OF THE UNITED STATES
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff.

vs.

NO. 11,898

JAMES R. HOFFA, ET AL,

Defendants.

Date: January 27, 1964

Chattanooga, Tennessee

Before: Honorable Frank W.
Wilson, Judge

OFFICIAL TRANSCRIPT OF PROCEEDINGS

VOLUME VII

PAGES 1351 TO 1570

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I N D E X

VOIR DIRE EXHIBITS

<u>Number</u>	<u>Description</u>	<u>For Identification</u>	<u>In Evidence</u>
14	Questionnaires		1367

TRIAL EXHIBITS

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SIXTH DAY OF TRIAL

9 O'Clock A.M.
January 27, 1964

(Thereupon, pursuant to adjournment from January 24, 1964, court was in session.)

THE COURT: All right. Gentlemen, are there any motions before we resume the selection of the alternate jurors?

MR. HAGGERTY: May it please the Court, I have a motion.

THE COURT: All right, Mr. Haggerty.

MR. HAGGERTY: Your Honor, if your Honor please, my motion is addressed to the eligibility of the employees of the TVA to serve on the jury.

Your Honor knows more about the organization of the TVA than I do, it is a government corporation.

Now, there is a difference between actual and implied prejudice as laid down by the Supreme Court. I refer first to the transcript of Friday at page 1334 or 1332, really it starts on, the examination by your Honor of Charles W. Trotter. I refer to the bottom of page 1333. This question was asked by your Honor:

"Is there anything that you have had, any dealings that you have ever had with the United States Government or any problems you may have ever had with the United States Government that would cause you to have any sympathy for or

1 any prejudice against the prosecution in this lawsuit?"

2 The answer: "I don't think so, no, sir."

3 Question: "Well, now, why do you hesitate?"

4 "Well, I guess you feel a little bit loyal to the
5 organization you work for, that's the only thing I think of."

6 You followed it with, "Well, would that cause you
7 to feel any sympathy for the United States Government in the
8 prosecution of this case?"

9 "I don't really think so, I think I can listen to
10 the evidence and make a decision based on the evidence of the
11 case. I feel I can."

12 Later on for actual prejudice your Honor excused
13 the juror.

14 I say to that that is an indication, a strong
15 indication, as to the mental attitude with which TVA employees
16 approach their work, loyalty, the loyalty to the organization
17 you work for, which is a government corporation.

18 Now, we have on this jury, one on the regular
19 panel, Mr. Case, Juror No. -- his number is 127 on the list,
20 and we have as to Mr. Curbow, who is on the alternate list,
21 194, John Curbow, both TVA employees.

22 Now, this question, may it please the Court, has
23 grown out of a situation rather unique in the District of
24 Columbia.

1 And there are three cases on point. The case
2 that I refer to is the Frazier case in 336 U. S. at Page 201
3 and the Crawford case, 212 U. S. 184, and the Wood case,
4 299, U. S. 133.

5 The situation that existed in the District of
6 Columbia was that out of prospective jurors there were more
7 members of the panel that were government employees than
8 those who were not. The question was raised and the Supreme
9 Court ruled the government employees were disqualified,
10 whereupon the Congress enacted a statute specifically for
11 the District of Columbia that government employees were
12 qualified in the district to serve.

13 Now, the question came before the Supreme Court
14 on those three cases. The Frazier case was decided. It was
15 decided, may it please the Court, after the statute had been
16 enacted and it was a construction and application of the
17 statute that affected the district alone.

18 So from the report, at Page 207, I desire to
19 read a portion of that case.

20 In ruling upon petitioner's objection the trial
21 judge assessed the situation as follows, chance has resulted
22 in this jury panel of 12 being composed of government
23 employees but the jury list from which they by chance were
24 selected is a mixture of government employees and private
25 employees. In this view in what takes place petitioner has

1 no cause to complain. The well-settled rule is that given a
2 lawfully selected panel free from any taint of invalid
3 exclusions or procedures and selections and from which all
4 disqualified for cause have been excused no cause for
5 complaint arises merely from the fact that the jury finally
6 chosen happens itself not to be representative of the panel
7 or indeed of the community.

8 There is under such circumstances no right to any
9 particular composition or group representation on the jury.
10 Finally in this phase of the case, in the case of United States
11 versus Wood, which citation I have given the Court, goes
12 far toward precluding petitioner's objection. This decision
13 sustained the act of Congress of August 22, 1935 removing
14 with specific exceptions the disqualification of government
15 employees previously existing in the District of Columbia
16 for jury service in criminal and other cases in which the
17 government was a party.

18 The disqualification has arisen in 1908 by virtue
19 of the decision made on common law grounds in Crawford versus
20 United States decision given the court. Owing to the large
21 and increasing proportion of government to private employees
22 in the district, the effect of the Crawford decision had been
23 by 1935 to create difficulties in securing qualified jurors.

24 To meet this situation the 1935 statute was
25 adopted. It continued.

1 Specific exemptions previously existed including
2 all executive and judicial officers of the United States and
3 then directed in presently material part all other persons
4 otherwise qualified according to law whether employed in the
5 service of the government of the United States or the District
6 of Columbia shall be qualified to serve as jurors in the District
7 of Columbia and shall not be exempt from such service.

8 The Wood case was a criminal prosecution for
9 theft from a private corporation. Three of the jurors were
10 federal employees challenged for cause on the ground. In
11 sustaining the conviction and the statute the court first
12 held that Congress had not undertaken to preclude the
13 ascertainment of actual bias and that the question at issue
14 was limited to implied bias. A bias attributable at law to
15 the prospective juror regardless of actual partiality.

16 I say, may it please the Court, I am making my
17 motion on the theory of implied bias.

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1 As to this the Court said of the statute, "The
2 enactment itself is tantamount to a legislative declaration
3 that the prior disqualification under the Crawford ruling
4 was artificial, is not necessary to secure impartiality in
5 criminal prosecution."

6 Well, I think that covers that point. There is
7 one other point, may it please the Court.

8 THE COURT: Mr. Haggerty, do I understand you
9 are reading, you have been reading from the Frazier case?

10 MR. HAGGERTY: Yes, your Honor.

11 THE COURT: All right.

12 MR. HAGGERTY: In this case it seems that the
13 charge had to do or was under the jurisdiction of the
14 Treasury Department, the narcotics division. I am speaking
15 of the Frazier case and there were two jurors, and the
16 petitioner challenged neither for actual bias, they were
17 employed by the Treasury Department, "Though he was afforded
18 an opportunity legally and factually for so doing. After
19 accepting them before trial he could not challenge them
20 successfully in a motion for a new trial."

21 I say to your Honor that my purpose of making
22 the motion at this time is before the jury is sworn and I
23 challenge for cause because of implied bias the two jurors
24 whose names I have given your Honor, namely, Case and and
25 Curbow, because they are employees of the TVA and I say

1 further to your Honor I conscientiously believe that if your
2 Honor had followed, in questioning of other TVA employees,
3 as zealously as you had of the Juror Trotter that it would
4 have shown in other instances by admissions of the jurors
5 that they felt this loyalty to their employer, the United
6 States of America, so I respectfully request your Honor to
7 grant my challenge for cause because of implied prejudice
8 on the part of all TVA employees and specifically on Case
9 and Curbow.

10 THE COURT: All right, sir. I believe at this
11 time, Mr. Haggerty, I will take this under advisement and
12 take a recess in a few moments to consider these cases.

13 Yes, sir.

14 MR. NEAL: Just before you do that, your Honor,
15 may I suggest that the Frazier case simply holds that govern-
16 ment employment, if you consider TVA a government employee,
17 is not a basis for implied bias but I think your Honor should
18 consider this, last Friday, because of the numerous counsel
19 that some of the defendants have at their command, the
20 ability to inundate the Court and government counsel with
21 motions, and in order to get along with this trial govern-
22 ment counsel asked specifically that the Court determine if
23 there were going to be any additional challenges for cause
24 based on things with knowledge of the defendant at that time.

25 Of course, the government did not seek and could

1 not cut off challenges for cause based upon information
2 coming to the attention of the defendants subsequent to that
3 particular moment but the Court inquired of each defense
4 counsel if they had, if they intended to make any challenges
5 for cause based upon information in their possession at that
6 time and the answer, your Honor, certainly by silence, was,
7 "No."

8 All of this was within the knowledge of all
9 defendants at the time your Honor asked about it, so this
10 motion, their challenge, is certainly untimely.

11 Second, to some extent the motion is based upon
12 some allegation of actual bias based on what Mr. Trotter
13 said. Mr. Trotter, however, was not excused because of bias
14 in favor of the government but some indication, in my
15 recollection, of a prejudice against the defendant or one
16 of the defendants.

17 And, third, your Honor, the United States vs.
18 Wood, Frazier and the other cases do not lend any support
19 to Mr. Haggerty's argument.

20 MR. HAGGERTY: May it please the Court, it is
21 my contention that the law is that I can issue a challenge
22 any time before the jury is sworn and it is also not only
23 my right but it is my duty.

24 May it please the Court, there is one other
25 matter while I am on my feet, if I may address the Court.

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THE COURT: All right, sir.

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MR. HAGGERTY: It's in reference to Mr. Hoffa personally. Could we have an understanding as to the time of the adjournment at noon because Mr. Hoffa spends most of his noon hour with his union business.

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Now, today he has a conference called with 23 people on the phone set for 12:30. Could we adjourn in time for him to return to the hotel where we have established an office?

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THE COURT: Yes. Mr. Haggerty, I was thinking in view of our experience up to this time, as you know, the Court has set the normal adjournment at 12:30 until 1:30. In view of our experience at this time, the Court has in mind this morning suggesting adjournment at 12 until 1:30 each day so that you may plan accordingly.

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MR. HAGGERTY: Thank you, your Honor.

THE COURT: All right. The Court will reserve at this time any action on Mr. Haggerty's motion. The Court will desire to look at the cases that he has referred to.

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Mr. Branstetter.

MR. BRANSTETTER: May it please the Court, there is one other like matter. The Court will recall that Ray E. McConnell, No. 108, 67 years old--the government counsel wants to interrupt, I think. It would be all right.

MR. NEAL: Excuse me, your Honor, may I point

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out to the Court another case on this prior point that is
not a District of Columbia case, it's Marshall vs. United
States 293 F. 2d, Fed. 2d, 561.

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THE COURT: 571?

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MR. NEAL: 561, your Honor.

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THE COURT: 561.

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MR. NEAL: Tenth Circuit, 1961, I believe

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certiorari was denied at 368 U. S. 898.

End Tk 3 9

Tk 4 fls.

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1 MR. NEAL: Now, this case, your Honor, is a case
2 at page 563 and I'm quoting. "Finally appellant charges error
3 in the trial court's refusal to allow challenges for cause to
4 two government employees called as prospective jurors. The
5 ruling of the court was correct. A government employee is not
6 disqualified from sitting as a juror in a criminal case simply
7 because of his employment."

8 With a number of cases there cited, your Honor,
9 including United States versus Wood. Thank you.

10 THE COURT: All right, Mr. Branstetter.

11 MR. BRANSTETTER: Juror McConnell, No. 188, your
12 Honor, we challenge for cause because, may it please the
13 Court, on the basis that not only at the time but since the
14 time Juror McConnell was tentatively accepted has come to
15 the attention of counsel the fact that this juror has a great
16 deal of difficulty in hearing. This information comes to
17 counsel from persons in the audience. It was not noted as
18 being severe at the time by myself. I frankly state this to
19 the Court, although I did note that there seemed to be some
20 difficulty on his part in hearing some of the questions of
21 the Court. I attributed that primarily to the noise and the
22 shuffling of papers that goes on around here to where it has
23 been very difficult for counsel for the defense to hear many
24 questions and many answers.

25 We have raised this point a number of times. We

1 are a goodly distance from the jurors as they are being
2 questioned and because of this fact it would be very difficult
3 for us to determine as we moved along the extent of the in-
4 ability of this particular juror to hear the Court's questions
5 or to hear properly and be attentive in the case.

6 I believe, too, that this particular juror wears
7 a hearing aid. It could be that he had it turned down a
8 little. I don't know, but in any event, we could not deter-
9 mine this at the time of the examination.

10 THE COURT: All right.

11 MR. BRANSTETTER: We challenge him for cause on
12 the basis of the hearing, impaired hearing.

13 THE COURT: I believe that challenge should be
14 overruled. Are there any other matters?

15 MR. SCHIFFER: I have a matter, if your Honor
16 please, if I may read this into the record.

17 THE COURT: Yes, sir, Mr. Schiffer.

18 MR. SCHIFFER: Your Honor, there is one question
19 your Honor has put to so many jurors and not to all and I
20 refer to the record, Volume 3, the 21st of January, at page
21 363, the last question. In referring to the Fifth Amendment
22 should any witness take the Fifth Amendment.

23 I wonder if your Honor would accept our respectful
24 suggestion to read again to the prospective jurors and all
25 those of whom the question was not asked the same verbage

1 addressed to some of the jurors as it appears at page 363,
2 commencing with line 18?

3 THE COURT: Page 363, line 18?

4 MR. SCHIFFER: Yes, sir.

5 THE COURT: All right, sir. The Court will take
6 that under advisement. Is there anything further? If there
7 is nothing further, the Court will take a 5-minute recess at
8 this time and then determine whether further time if needed,
9 but we'll take a recess to consider the citations given the
10 Court.

11 (Thereupon, at 9:23 a.m., court was in recess.)
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End TK 4
TK 5 fls

1 THE COURT: I believe that the challenge to
2 prospective juror case and Curbow will be overruled.

3 All right. Now--, yes, I will recognize you in
4 just a moment, Mr. Branstetter. A motion was filed upon
5 Friday on behalf of Mr. Tweel for a severance and to quash
6 the panel. The Court is of the opinion that that motion
7 should be overruled.

8 All right. Mr. Branstetter.

9 MR. BRANSTETTER: May it please the Court,
10 heretofore counsel has moved to quash the panel and also has
11 asked for a hearing to determine or an offer to show that
12 the panel did not constitute a fair cross-section of the
13 community. And that cognizable elements of the community
14 had been systematically excluded.

15 Now, in order to keep the record straight with
16 reference to that particular motion, and I state to the
17 court it will be renewed from time to time as we conceive
18 the law requires that we plan on relying on it. This morning,
19 after we came into court at some five minutes of nine, the
20 clerk handed an order to all defense counsel stating that
21 an additional 36 jurors had been told to report to court
22 today and that at the same time we were handed the
23 "questionnaire as to qualification for jury service" for those
24 individuals that had been called.

25 The purpose of reference to that at this time is

1 to keep the record straight and also that we had moved that
2 all questionnaires be made a part of the record and I under-
3 stand the Court still has that under advisement, that is,
4 the questionnaires for all prospective jurors, all three lists
5 that were summoned or that may be summoned.

6 THE COURT: All right. Well, the questionnaires
7 with respect to all jurors who had been summoned to report,
8 including the 36 for today, of which copies of which
9 questionnaires have been given to all counsel, those
10 questionnaires may all be filed, some have heretofore been
11 filed individually.

12 If it is agreeable with the parties the Court
13 would permit them to be all filed as a collective exhibit.

14 MR. BRANSTETTER: Yes, this is very agreeable,
15 may it please the Court, but do I understand that the Court
16 is limiting this to those jurors who have actually been told
17 to report?

18 THE COURT: Yes. Limiting it to the questionnaires,
19 copies of which have been provided to counsel, and that is
20 limited to the questionnaires of jurors who have been ordered
21 to report.

22 MR. BRANSTETTER: We still move the Court to
23 require the clerk to submit and file all questionnaires dealing
24 with all prospective jurors.

25 THE COURT: All right. Overrule that motion.

1 Gentlemen, there have, of course, been repeated motions with
2 regard to the array. The Court is of the opinion that there
3 is nothing in the record to support the defendants' challenges
4 for the panel, that the panel was in any way improperly
5 drawn.

6 May we identify the questionnaires as next
7 exhibit number, all questionnaires not heretofore filed,
8 copies of which have been made available to counsel as exhibits
9 and copies of which have been made available to respective
10 counsel will be filed as Collective Exhibit No. 14.

11 MR. BERKE: If Your Honor please, only one set
12 has been furnished as a collective exhibit but I haven't
13 seen them. Of course, it is impossible for all counsel to
14 see the questionnaires.

15 THE COURT: Well, the Court will, if it is
16 agreeable with counsel, the Court will file the original
17 questionnaires as the exhibit, if that is agreeable with
18 counsel.

19 MR. SCHIFFER: Your Honor, could we, on behalf of
20 the Defendant Parks, we have not seen this particular exhibit
21 concerning the order filed this morning by the Court. I
22 wonder if we might have time now to go over those question-
23 naires to determine whether or not any of these jurors are
24 going to be satisfactory?

25

1 (The questionnaires referred to above, when
2 furnished, to be marked Exhibit No. 14, col-
lectively, and received in evidence.)

3 THE COURT: Well, we will take that up at an
4 appropriate time, Mr. Schiffer. I don't believe that would
5 be appropriate at this moment.

End Tk
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Tk 6
follows

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1 THE COURT: Is there anything further? If not,
2 let's have the prospective alternate jurors brought into the
3 courtroom. No. 194, Mr. Curbow.

4 No. 115, Mr. Burrows.

5 No. 173, Mr. Seagle.

6 No. 174, W. L. Dickson.

7 No. 215, Bryant Cramer.

8 No. 264, Chester H. Capehart.

9 No. 224, Stanley V. Bonner.

10 (Thereupon, the venire of seven was brought into
11 the courtroom.)

12 THE COURT: Gentlemen, the Court does not know
13 what witnesses may be called in the case. The Court does not
14 know what parties may take the stand in the case. Should any
15 witness exercise a constitutional privilege, a constitutional
16 right, against testifying against himself, the Court will
17 instruct you that he has a right to do that and that you should
18 not in any way allow that to influence your judgment against
19 any party to this lawsuit.

20 Likewise, if any party should exercise the
21 constitutional right not to testify in the case, as I say,
22 the Court has no knowledge of whether that would ever develop
23 or not develop in the case, but if any party should exercise
24 his constitutional privilege in that respect, the Court would
25 likewise instruct you that you should not allow that in any

1 way to influence your judgment or create any bias or any
2 prejudice against any party in this lawsuit, including the
3 party who might exercise such constitutional right.

4 Is there any reason that any of you would have
5 that you would not be able to follow the Court's instructions
6 in that respect?

7 All right, step out, please, gentlemen.

8 (Thereupon, the venire of seven was excluded
9 from the courtroom.)

10 THE COURT: All right, gentlemen, we have seven
11 prospective alternate jurors. One challenge has heretofore
12 been made by and on behalf of the government. We are now
13 ready to receive any further challenges.

14 MR. NEAL: May it please the Court, I did want
15 to point out that last Friday I believe some defense counsel
16 asked that Mr. Bonner be called back for some additional
17 examination and the government made the same request with
18 respect to Mr. Capehart.

19 THE COURT: Each of those requests, I think,
20 should be overruled at this time and we should proceed with
21 the peremptory challenges. The government has one peremptory
22 remaining. The defendants have two peremptory challenges
23 among all defendants.

24 MR. SILETS: If your Honor please, did the Court
25 complete his full examination of the last four on Friday?

1 THE COURT: Yes, sir. All right, are you ready,
2 gentlemen? What does the government say with regard to --

3 MR. HOOKER: We pass.

4 THE COURT: All right, what do the defendants say
5 with regard to --

6 MR. BRANSTETTER: May it please the Court, on
7 this last Friday I raised the question that with reference
8 to the peremptory challenges to the regular panel, the Court
9 had confined all defendants to twelve challenges. That we
10 thought totally inadequate under the circumstances. Mr. Berke
11 then made a motion that we be permitted additional peremptory
12 challenges and this was denied.

13 Now, we have wrangled between defense counsel over
14 a period of a week in trying to arrive at a mutual under-
15 standing as to which jurors might be peremptorily challenged.
16 We really reached no agreement, although in effect the twelve
17 challenges were used.

18 We have businessmen as defendants. We have the
19 president of the Teamsters Union International. We have other
20 officials of the Teamsters Union and men who have no relation-
21 ship whatsoever with labor. Each time I would seek to exercise
22 a challenge on behalf of someone because I thought they might
23 be prejudiced against labor unions or labor union officials,
24 the business efforts defendants would insist that they were
25 being discriminated against and that they should not be re-

1 quired to concur in such.

2 This went on for a week, night and day, recess,
3 and every period that we met and discussed peremptory challenges.
4 We think that the procedure that was used is truly unjust.

5 Now, as to the peremptory challenges to the
6 alternate jurors, we do not agree on anything. I will object
7 at any time that any challenge is made by some defendant that
8 does not agree with mine. I understand the Court has said and
9 interprets the rule, Rule 24C, to mean that the Court cannot
10 give two defendants, even though they may be numerous, addi-
11 tional challenges to the alternate jurors.

12 We most respectfully disagree with the Court's
13 interpretation of that statute. We think that the Court does
14 have the right to give additional challenges to defendants
15 where they are so numerous and where the situation is as it
16 is here. And so with this statement to the Court, as I stated
17 on Friday, and because of the wrangling over the peremptory
18 challenges and what I conceive to be a truly unfair situation,
19 I will object to the exercise of peremptory challenges by any
20 defendant to any person that I might want to keep on the panel
21 or vice versa.

TK 6 End
TK 7 fls

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THE COURT: All right.

MR. SCHIFFER: May I respectfully state the position of the Defendant Parks, your Honor?

THE COURT: All right.

MR. SCHIFFER: If the Court please, in addition to the objections we have made to the array on the grounds we set forth to the jury, we wish to reiterate those grounds again and specifically refer to the point that insofar as the drawing of alternate jurors is concerned there has been a systematic exclusion of Negroes and Mr. Parks in his case, the defendant whom I represent, is a Negro.

In addition, I believe that Rule 24, Section C, does not in any sense bind the Court to the limitation of one or two alternate jurors or three or four, as the case may be, and in the present posture of this case we believe that it would be unconstitutional to have that kind of application of Rule 26, Section C, it would be completely unconstitutional in that the version as adopted by the Court is actually formulated into a rule by the Court and in the present posture of this case, inasmuch as my defendant cannot agree with any of the others in this case, that he would be deprived of having any voice whatever in the selection of one of his peers or two or four of his peers in this case.

Now, I speak to the Court of due process insofar

1 as Rule 24-C is concerned.

2 Now, we have systematically throughout this
3 entire trial to this moment, if it may be called a trial
4 technically begun, we have been systematically excluding,
5 not merely from what I think our basic rights in this case
6 and as the Supreme Court has enumerated them, but I firmly
7 believe now, and I am convinced, and I say this with full
8 integrity as an officer of the court, that in no event can
9 Mr. Parks now succeed in obtaining a fair trial in this
10 court.

11 I rely upon the entire record which has transpired
12 up to this very moment. We find that when we go through the
13 entire jury lists, despite what the Supreme Court of the
14 United States has laid down as primary thumb rules of how
15 we select a jury, that has not been adhered to in the present
16 instance and I think that part of that reason is because
17 there is a misjoinder of the parties in this case.

18 If Mr. Parks could be tried alone, your Honor,
19 we would take four or five days to complete the trial. With
20 all these multiple defendants here and their views, which we
21 want to respect, we sincerely want to respect and we want
22 them to sincerely respect our position on these alternate
23 jurors, as an example, we cannot agree as to who should not
24 sit as alternates.

25 We are faced with a problem, your Honor, which

1 affects the entire posture of the case and has from the
2 very beginning. I insist that the rights of this Negro
3 defendant be respected by the government.

4 Now, I believe that the government can stipulate
5 there is no injunction in Rule 24-C which prohibits both
6 parties, if the government is interested in a fair trial,
7 from stipulating with us that each defendant should at least
8 have some kind of representation by the number of alternate
9 challenges in the nature of peremptory that should be allowed
10 the defendants.

11 If the government won't concede it, the Court
12 certainly has the right and the power in this case to so
13 construe 24-C and to permit my defendant, Mr. Parks, an
14 opportunity to voice by a challenge anyone he feels is
15 prejudiced against him.

16 Now, it isn't a question of whether or not any-
17 one of the Negro race is already in this jury panel. The
18 cancer in this case goes back to the very selection of the
19 original panel, the panel which has been submitted as of
20 the 22nd of this month and that of the 23rd. In no event
21 can Mr. Parks select a jury of his peers as contemplated
22 by the rules of American justice as laid down by the United
23 States Supreme Court and I can only appeal to your Honor
24 that in all fairness that this man be afforded a fair trial
25 within American principles and if he is to be deprived of

1 his free voice and choice of who sits among his peers then
2 I say the government has succeeded in attempting and has
3 actually at this point managed to secure a drumhead court-
4 martial trial.

5 THE COURT: Mr. Schiffer, do you have any
6 authority that the matter of peremptory challenges is a
7 constitutional right? Have not the cases held repeatedly
8 that peremptory challenges are not based on any constitutional
9 right?

10 MR. SCHIFFER: We have not seen the case yet,
11 your Honor, and this is what I have observed and I at least
12 have not been able to come up with a case in point that just
13 hasn't been touched upon wherein a case of multiple defendants,
14 such as this, there has been a misjoinder under the rules
15 whereby as a result of that misjoinder this defendant, who
16 would normally be entitled to ten challenges for himself if
17 he were tried alone, is cut down to less than two challenges
18 for the regular panel and we have at least one or two chal-
19 lenges on the peremptory on the additional panel, he is now
20 cut down to nothing. In practical effect, in every real
21 sense, he is being deprived of a vote or an opportunity to
22 voice his expression as to any of the alternate jurors.
23 That case has not been shown up in the books yet and I have
24 spent a considerable amount of time looking for it but you
25 will find, your Honor, that in the present posture of this

1 case by my man actually and in every real sense has been
2 deprived of at least 10 to 12 challenges and for that reason
3 Rule 24-C should not obtain and he should be given some kind
4 of relief here because the jury that is sitting here now
5 there is not a single one who was sitting in this panel on
6 the regular jury who is a person of the choice of the
7 Defendant Parks. He has been forced into a position by the
8 rulings of the Court, at the instance of the government, and
9 he is just standing here by himself and can't make his voice
10 heard as to whom he feels should sit on the jury to judge
11 him honestly and I don't think there is anybody on this
12 panel as of now who could afford Mr. Parks an honest ex-
13 pression by a verdict in his favor and after all he has
14 pleaded innocent.

15 THE COURT: All right.

16 MR. SILETS: May it please the Court, needless
17 to say in accordance with the Court's standing rule I adopt
18 and incorporate all of the objections voiced by Mr. Bran-
19 stetter and Mr. Schiffer and if any should be stated to the
20 Court by persons to follow me.

End Tk 7 21
Tk 8 fls.

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1 MR. SILETS: In Rule C the sentences, or the
2 sentence which is most in point is as follows: "Each side is
3 entitled to one peremptory challenge in addition to those
4 otherwise allowed by the law if one or two alternate jurors
5 are to be impaneled and two peremptory challenges if three
6 or four alternate jurors are to be impaneled."

7 This statement promulgated by the Supreme Court
8 of the rules to be followed by the Court is not one which
9 restricts the Court, it seems to me, in its discretion to
10 grant greater peremptory challenges.

11 This is not an admonition to the Court that under
12 all circumstances because the peremptories be limited to two
13 in instances where there are three or four alternates to be
14 selected. If there is any case where a discretion of the
15 Court is more appropriately to be invoked than this one,
16 I cannot imagine it.

17 Here we have six defendants who have been given
18 by the Court according to this rule two peremptory challenges.
19 It would take more than the wisdom of Solomon to divide those
20 two among these six.

21 It is axiomatic, Your Honor, that if each of
22 these defendants and if in particular my client should say
23 to me his desire to have me make a challenge to one of these
24 alternates which is contrary to the desire of Mr. Branstetter's
25 client, we are at loggerhead. There is no conceivable way

1 where these defendants could join in and exercise these jointly.

2 Now, this is somewhat different than what the
3 Court has done with respect to the 12 peremptory challenges.
4 It is true and I agree with Mr. Schiffer we have great doubts
5 amongst--, we've had great doubts amongst each other as to
6 who was going to exercise what challenges. We have fought.
7 We have disputed. We have argued. I do not accept the panel
8 of 12 as being a fair and impartial jury for my client. I
9 say this, in that respect however, we have been at least
10 afforded by the Court the choice of two per defendant or the
11 right to join jointly in the exercise of those challenges.

12 At the very minimum if we had felt that we did
13 not want to exercise them jointly we would have exercised
14 each of our two challenges individually. We have no such
15 choice here. There is no possibility that I can exercise a
16 one-third challenge because two divided by six is one-third.

17 Now, I can't see decapitating a prospective
18 juror and saying that is my one-third.

19 I suggest to the Court that a fair reading of
20 Rule 24 (c) would in this particular instance suggest that
21 at least at the very minimum, each defendant in the
22 discretion of the Court should be entitled to one peremptory
23 challenge which he could exercise as he sees fit. Or
24 collectively we could exercise all six.

25 Your Honor, this is the epitome of those instances

1 where if the Court were to err, he should err in favor of the
2 defendant because it is his liberty that is at stake. I
3 could not suggest to the Court that this is error on the part
4 of the Court to so refuse. I suggest it may be error on the
5 part of the Court to refuse to afford each of the defendants
6 at least one peremptory challenge.

7 For that reason I make my motion adopting all of
8 the comments of co-counsel and move that the Court grants to
9 each of the defendants at least one peremptory challenge
10 with respect to the alternate jurors.

11 THE COURT: All right. That motion may stand for
12 each party defendant.

13 MR. BERKE: If Your Honor please, the Defendant
14 Hoffa has a little memorandum that may be of some help to the
15 Court.

16 THE COURT: All right.

17 MR. ALEXANDER: May it please Your Honor?

18 THE COURT: Yes.

19 MR. ALEXANDER: May I say one word on the
20 proposition?

21 THE COURT: Yes, sir.

22 MR. ALEXANDER: May it please the Court, we on
23 behalf of the Defendant Tweel have now been boxed into an
24 untenable situation insofar as challenges to the extras are
25 concerned. At least on the regular jury where there were 12

1 challenges as Mr. Silets so ably pointed out we could divide
2 that and have two apiece. Although we didn't consider that
3 enough challenges.

4 But now, I am in a position of representing Mr.
5 Nicholas Tweel who is a business man, whose background has
6 been, if you please, anti-labor, not pro-labor. A man who
7 never saw James R. Hoffa until the day that he was arraigned.
8 A man who would want an entirely different type jury than
9 possibly Mr. Hoffa would want.

10 Now, I don't know how we're going to handle the
11 two challenges. If the challenges are handled from the top
12 of the indictment starting with Mr. Hoffa down, any challenges
13 that he might exercise on behalf of the defendants would
14 certainly not be agreeable with the Defendant Tweel. And I'm
15 confident that any challenges that the Defendant Tweel would
16 exercise would not be agreeable with Mr. Hoffa.

17 So, we respectfully join in the motion made by
18 Mr. Silets that more challenges be granted to the defendants
19 in this cause. Otherwise, it is of no force and effect for
20 us to have any challenges.

21 THE COURT: All right, first, with reference to
22 the motion renewed on behalf of the defendants by Mr.
23 Schiffer as to a challenge to the array, as indicated
24 earlier, the Court is of the opinion that there is nothing
25 in the record in this case that would in any way indicate that

1 the panel was improperly drawn and that the defendants repeated
2 motions and charges in that respect are without any foundation
3 in the record.

4 With regard to the peremptory challenges, the
5 Court is of the opinion that the appropriate number of
6 peremptory challenges to alternate jurors on each side is
7 two to a side.

8 Now, then, if the defendants can agree among
9 themselves as to the exercise of those two peremptory
10 challenges, they will be permitted to do so. If they cannot
11 agree among themselves as to the exercise of those peremptory
12 challenges, the Court will call upon counsel in accordance
13 with the manner in which the defendants are listed upon the
14 indictment, starting with the first name on the indictment
15 and proceed down the indictment until the two challenges
16 are exhausted or until all defendants have passed.

17 All right, at this time, gentlemen, can the
18 defendants agree among themselves upon the exercise of
19 peremptory challenges? Or do you desire to pass in that
20 respect? What are your desires?

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1 MR. BROWN: If the Court please, your Honor, may
2 I address the Court from here for the sake of expediency?

3 THE COURT: Yes.

4 MR. BROWN: May we have about three minutes to
5 confer on this?

6 THE COURT: Yes.

7 MR. BROWN: As counsel has so ably stated, it has
8 been a cat fight so far as to who is going to excuse who.

9 THE COURT: Yes, sir, you may.

10 MR. ALEXANDER: May I suggest more than three
11 minutes?

12 THE COURT: Yes. I think we ought to take a 5-
13 minute recess.

14 (Thereupon, a recess was had.)

15 THE COURT: All right, gentlemen, have you any an-
16 nouncement to make on behalf of the defendants with respect
17 to the exercise of peremptory challenges jointly?

18 MR. BERKE: If your Honor please, as far as the
19 exercise of challenges jointly, I wish it were that we could
20 exercise the challenges jointly but we were unable to agree.

21 THE COURT: All right.

22 MR. BERKE: Among ourselves, so as I understand
23 the Court, the Court has directed that in the order named in
24 the indictment that the counsel --

25 THE COURT: (Interposing) That is correct. At

1 this time then the counsel for Mr. Hoffa will be entitled to
2 make such peremptory challenges as they may desire to any
3 alternate juror should they exercise challenges in accordance
4 with their previous procedure it would pass back to the govern-
5 ment and after the government either passes or exercises any
6 challenges they may desire to pass back to the defendants
7 and when it passes back to the defendants it will go to the
8 counsel for the next defendant in the indictment.

9 MR. SILETS: Your Honor, I'd like to interpose an
10 objection on behalf of the Defendant Dorfman to this procedure
11 because it effectively precludes him from exercising any
12 challenges.

13 THE COURT: Allow that objection to stand for
14 each party and allow it to be overruled.

15 MR. BERKE: I might state, if your Honor please,
16 in trying to reach an agreement I heard the very same objec-
17 tion when I stated that we would exercise a challenge.

18 Now, this challenge we are exercising, if your
19 Honor please, is not, in my opinion, proving the challenge
20 that Mr. Hoffa wants but we realize that we must exercise the
21 challenge. We discussed this with the other attorneys. We
22 had two different jurors that we desired to exercise a chal-
23 lenge on and we are only challenging this juror, whose name
24 we will now announce, because there was less objection
25 numerically from the attorneys that we have to work with to

1 this particular juror challenged than the other.

2 THE COURT: All right.

3 MR. BERKE: Just on that basis only and not on
4 the basis that it's truly the challenge that we want, we
5 challenge the Juror Seagle.

6 THE COURT: Seal?

7 MR. SAULPAW: Seagle.

8 MR. BERKE: Seagle.

9 MR. SAULPAW: 173.

TK 9 End
TK 10 fls

10 THE COURT: 173.

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1 MR. ALEXANDER: Now, may it please the Court--

2 THE COURT: Just a moment, Mr. Alexander, until
3 I have an opportunity to correct my record accordingly.

4 MR. HOOKER: May it please the Court, Your Honor,
5 we are not just right clear on the names of the Court's jurors
6 that are now in the box.

7 THE COURT: All right, I will read the jurors in
8 the order in which their names now stand.

9 The first juror is No. 194, John Donovan Curbow.

10 The next juror, Lemon R. Burrows, No. 115.

11 The next juror is No. 174, Mr. W. L. Dickson.

12 The next juror is No. 215, Mr. Bryant Paul
13 Cramer.

14 The next juror is No. 264, Mr. Chester H. Capehart.

15 And the last juror is No. 224, Mr. Stanley V.
16 Bonner.

17 All right, the Court will now recognize Mr.
18 Alexander.

19 MR. ALEXANDER: May it please the Court, Your
20 Honor, we disagree with the challenge exercised on behalf of
21 Mr. Hoffa of Mr. Seagle upon the grounds that Mr. Seagle is
22 the only juror who has been called who has been active in
23 labor management relations on behalf of management and my
24 client desires that Mr. Seagle serve. We do not want to
25 excuse him and we object to him exercising the challenge of

1 this man.

2 THE COURT: All right.

3 MR. ALEXANDER: That is the alternate.

4 THE COURT: All right. Any further challenges
5 upon behalf of Mr. Hoffa at this time?

6 MR. BERKE: No, sir, Your Honor.

7 THE COURT: Any further challenges?

8 MR. BERKE: You just allowed us one, did you not,
9 Your Honor?

10 THE COURT: There are two challenges that may be
11 exercised by the defendants and I'm going to call on counsel
12 for each defendant and see if there are other peremptory
13 challenges. If not, it will pass back to the government.

14 MR. BERKE: Of course, I understand, I know it
15 is passed to the government now but I just wondered whether
16 we had the second challenge, too. I operated on the premise
17 we would only have one and it would go to the next one.

18 THE COURT: No, sir, it will be whatever challenges
19 you desire to exercise when it comes back to your side it
20 will go to the next counsel. Does any other counsel for any
21 defendant desire to exercise a peremptory challenge at this
22 time? If not, it will pass back to the government.

23 MR. BRANSTETTER: Just a minute, may it please
24 the Court.

25 THE COURT: Yes, sir.

1 MR. SILETS: Your Honor, is it my understanding
2 of the Court's procedure it s going to pass by each
3 defendants now?

4 THE COURT: Yes, sir.

5 MR. SILETS: I would like to make a statement on
6 behalf of Mr. Dorfman irrespective of the fact that it is
7 now passing through each counsel, I still reiterate that we
8 are effectively being precluded from making proper challenges
9 because if the right procedure were being carried out each of
10 us could pass it back to the government and see what the
11 government is going to do and on that basis I'm not going to
12 exercise a challenge because I want to see what the
13 government does.

14 MR. BRANSTETTER: May it please the court, I
15 believe there has been a shifting procedure if I understand
16 the Court correctly each time when any defense counsel has
17 exercised a challenge this has left an opening which was then
18 filled.

19 THE COURT: Yes, sir.

20 MR. BRANSTETTER: Then any other challenges would
21 not be subject to being taken by the defendant at that time
22 it being automatically passed back to the government with
23 a full box. So we think that this procedure should continue
24 to be followed.

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1 THE COURT: Well, the Court is continuing the
2 exact procedure that has been followed at all times. The
3 Court hasn't endeavored to limit it to either side to making
4 only one challenge at a time. The parties may have followed
5 that practice but that has not been the cause of any limita-
6 tion by the Court to it. The party may exercise one challenge
7 or they may exercise any number of challenges that are avail-
8 able to them to exercise.

9 MR. BRANSTETTER: May it please the Court, I
10 distinctly understood that no party would be required to
11 exercise a challenge in the absence of a full box.

12 THE COURT: And there is a full box now. The
13 jurors in the box now are Mr. John Curbow, L. R. Burrows,
14 Bryant Paul Cramer, Stanley Bonner.

15 If any other defendant decides to exercise a
16 peremptory challenge at this time it may do so. If not, it
17 will pass back to the government. When it returns it will
18 come back to counsel for Mr. Campbell.

19 MR. BROWN: That's what we understood, the
20 defendants will get the last challenge.

21 THE COURT: Yes. Any further defendant who
22 desires to exercise any challenge at this time? If not,
23 the challenges will pass back to the government.

24 MR. HOOKER: The government passes.

25 THE COURT: All right. The challenges will

1 return to the defendants and counsel for Mr. Campbell will
2 be recognized at this time first.

3 MR. BRANSTETTER: May it please the Court, I am
4 not sure that the procedure that we understood is following
5 in sequence but, in any event, the Defendant Campbell, as
6 this Court knows and has known for several days, is an
7 official of a Teamsters Union in Detroit, Michigan.

8 In discussing or reaching--in attempting to reach
9 an understanding with defendants who represent diversified
10 interest there was no possibility of agreement at all. The
11 alternates that Defendant Campbell and myself, representing
12 him, thought would be to his best interest in accordance with
13 the memorandum brief that was sent up to you on the statement
14 of the United States Supreme Court, there was totally dis-
15 agreement, so counsel on his behalf alone and for no other
16 defendant challenges Dickson.

17 THE COURT: Mr. Dickson. What number?

18 MR. BRANSTETTER: No. 174.

19 THE COURT: 174?

20 MR. SAULPAW: 174, your Honor.

21 THE COURT: Mr. Dickson. All right.

22 MR. ALEXANDER: May it please the Court, the
23 same objection stands for the Defendant Tweel to challenges
24 of this juror, we do not agree to this challenge.

25 THE COURT: All right.

1 MR. SCHIFFER: On behalf of the Defendant Parks
2 we understand his rights are likewise protected, we do not
3 join in the challenge.

4 MR. SILETS: The same for the Defendant Dorfman.

5 THE COURT: All right.

6 MR. BROWN: Do I understand all objections go to
7 all defendants?

8 THE COURT: Beg your pardon? Those objections
9 will stand for all defendants. All right. What do you say
10 for the government?

11 MR. HOOKER: The government challenges the Juror
12 Capehart.

13 THE COURT: Capehart. Do you have his number?

14 MR. BROWN: 264.

15 MR. SAULPAW: 264.

16 MR. BRANSTETTER: Yes.

17 THE COURT: All right. Gentlemen, all peremptory
18 challenges have been--

19 MR. BRANSTETTER: (Interposing) May it please
20 the Court, do I understand that those two challenges that
21 were exercised constitute all of the peremptory challenges
22 that all of the defendants have, even though they have
23 objected and asserted that they had no choice?

24 THE COURT: Yes, sir.

25 MR. BRANSTETTER: Now, may it please the Court,

1 this is indicative of this total proceeding. Counsel for the
2 government, and I must concede, as much as I might dislike to,
3 has boxed us in insofar as the Defendant Campbell is con-
4 cerned on both the peremptory challenges to the 12 members
5 and to the four. I did not understand the ruling originally
6 to be exercised in this manner. They have effectively elimi-
7 nated from this jury panel, including any alternates, any
8 person who indicated a total fairness toward labor unions and
9 we would, therefore, move to strike this entire panel of
10 jurors, including the alternates, on the basis of the unfair-
11 ness of the method of selection. I would like to state to
12 the Court, based upon the Court's ruling immediately preceding
13 the recess, the Court said that there was nothing in this
14 record to indicate that there had been an improper selection
15 or method used in selecting the names to be placed in the
16 jury box to be drawn for this entire jury panel or this
17 entire array, I should say. We offered to prove and again
18 offer to prove at this time that there was systematic exclu-
19 sion of cognizable elements in the community, particularly
20 Negroes, in that not a single name of a Negro was placed in
21 the jury box from any county other than Hamilton, there being
22 nine counties in this district. We offer proof.

23 THE COURT: All right. Overrule the motion to
24 strike the panel.

1 MR. BROWN: If the Court please, may I be heard
2 briefly on this matter on behalf of the Defendant King, it is
3 now, if I understand correctly, Mr. Bonner is the last alter-
4 nate taken on this jury panel?

5 THE COURT: That is correct, Mr. Brown.

6 MR. BROWN: And we address ourselves in addition
7 to the other objections and motions heretofore made as
8 specifically to Mr. Bonner when we ask the Court on this
9 particular juror to strike him for cause as the Court will
10 recall certain answers were made in response to questions of
11 your Honor on voir dire of Mr. Bonner wherein he exhibited
12 great antagonism towards unions. Of course, I represent a
13 member of the Teamsters Union. We feel that this man cannot
14 in all fairness give my defendant a fair trial because the
15 Court will recall one particular instance and I think this
16 was the main reason the government wanted Mr. Capehart off
17 the jury, Mr. Capehart had been involved in a strike at
18 Combustion Engineering or when he was a member of that union
19 and they went out on strike.

20 And the Court asked Mr. Bonner, who is one of the
21 white-collar people of Combustion Engineers, his position on
22 that and Mr. Bonner showed antagonism toward organized labor
23 by stating that he did not agree with him going out at that
24 time. And I think that is self-evident that this man cannot
25 judge any member of organized labor fairly and as I stated

1 while we entered into the objections and the motions hereto-
2 fore made as to voir dire and this panel as a whole and the
3 alternates specifically we ask the Court to strike Mr. Bonner
4 for cause because of his previous answers on voir dire.

5 THE COURT: All right, overrule that motion. Yes,
6 Mr. Schiffer.

7 MR. SCHIFFER: Your Honor, I would just like to
8 address the Court. Additionally as to the offer of proof
9 heretofore made on behalf of all defendants, we should like
10 to point out to the Court as an average how these entire
11 names have been drawn for the service on this jury and we
12 base it on the first one hundred names drawn, the fact that
13 in Benton, Tennessee, Polk County, has a population per county
14 of 12,160 and we have no one from Polk County. In Chatta-
15 nooga --

16 THE COURT: (Interposing) Mr. Schiffer, I want
17 to hear you on any matter that would be pertinent, would it
18 not be appropriate, however, to state the real basis of the
19 complaint? Is it not established law that the issue before
20 the Court is whether or not in placing names in the jury box
21 there has been systematic exclusion of any cognizable segment
22 of society?

23 MR. SCHIFFER: Yes, sir.

24 THE COURT: Are you not proposing to address your
25 argument as has been heretofore the case solely to the question

1 of the particular jurors that have been produced at a
2 particular time out of a portion of the panel?

3 MR. SCHIFFER: I was addressing it to the array,
4 if we can call it that, insofar as it applies to the alternates
5 who have been placed in the box, who have been drawn originally
6 as jurors, and I want to indicate that even with reference to
7 the alternates there has been a systematic exclusion of
8 wholesale numbers of people who are in this judicial district
9 and for that reason I felt it was apropos and incumbent upon
10 me to place in the record that inadequacy of the selection of
11 the names.

12 THE COURT: I believe if you desire to submit
13 anything for the record in that regard you will be permitted
14 to do so, to submit it in writing, however. I don't think
15 that we serve any purpose to take up the time to hear argu-
16 ment.

17 MR. SCHIFFER: I will be glad to do that.

18 THE COURT: In view of the clear statement of the
19 law as the Court understands.

20 MR. SCHIFFER: If we may have the Court's permis-
21 sion to submit it in writing, we will be happy to.

22 THE COURT: Yes, sir, you may have that permission.

23 MR. SILETS: May it please the Court --

24 THE COURT: (Interposing) Yes, Mr. Silets.

25 MR. SILETS: I would like to exercise a peremptory

1 challenge on behalf of the Defendant Dorfman as to Mr. Bonner
2 and I so move to challenge Mr. Bonner peremptorily as well as
3 for cause. Your Honor has ruled against the one for cause.
4 I would like to make a peremptory challenge to Mr. Bonner.

5 THE COURT: All right, overrule that request.

6 MR. SILETS: Your Honor, I would also like in
7 light of your Honor's comments from just a moment ago leave
8 to establish my testimony that the method used by the Clerk
9 and the Jury Commissioner were not such as to place into the
10 jury box from which the names were drawn a fair cross-section
11 of the community. Your Honor has never afforded that
12 opportunity.

13 THE COURT: All right, we will overrule that
14 request.

15 MR. HAGGERTY: May it please the Court --

16 THE COURT: Yes, sir.

17 MR. HAGGERTY: For the purpose of the record
18 and in support of the contentions heretofore made as to the
19 composition of the jury panel, the thirty-two jurors whose
20 names were given this morning but were not used and the
21 thirty-two questionnaires disclosed as follows, briefly,
22 twenty-eight of those jurors have past jury experience;
23 eight were college educated; and two were employees of the
24 TVA.

25 THE COURT: All right. Yes, Mr. Grady.

1 MR. GRADY: If your Honor please, you ruled on
2 our motion as I understood your Honor made yesterday wherein
3 we refamiliarized the Court with our position, as a motion
4 for severance I would like to point out to your Honor that
5 that was also a motion to strike the panel based on the idea
6 that we do not feel that we have had any information on which
7 to base peremptory challenges. Now, we put our challenges in
8 the pool because we don't desire any disagreement with the
9 other defendants, but as your Honor will recall, we asked
10 specifically, put this Court on notice, that our man and the
11 testimony would show an anti-union background and we asked that
12 the Court question the jurors about that sort of prejudice.

13 The Court recognized this on the other side of
14 the coin, and went to great length to eliminate such prejudice
15 on the part of the defendants here who are associated with
16 unions, but absolutely refused to recognize the other side
17 of the coin or such prejudice on the part of the Defendant
18 Tweel.

19 We feel that our motion to strike the panel should
20 be renewed at this time because we have had no opportunity
21 to qualify anybody for jury and it is impossible for Mr. Tweel
22 to have a fair trial under that basis.

23 THE COURT: All right, overrule the motion. Now,
24 then, gentlemen, we are ready to have this jury panel brought
25 in and sworn.

1 MR. BRANSTETTER: Could I inquire, does the
2 Court now propose to bring the jury panel in for swearing?

3 THE COURT: Yes.

4 MR. BRANSTETTER: Preliminary to the reading of
5 the indictment?

6 THE COURT: Yes.

7 MR. BRANSTETTER: I would like to move the Court
8 at this time that the Court require the government to produce
9 in this Court before this jury panel each and every witness
10 they intend to use on this trial in order that we may ask the
11 jurors in order that the Court may ask the jurors witness by
12 witness whether or not they know the witness, whether or not
13 they are related to the witness, whether or not they have
14 had any contact with the witness.

15 This motion is based on this, may it please the
16 Court, previously and in voir dire examination the Court
17 asked I think most prospective jurors if they knew the
18 government witnesses.

19 Well, I would suggest that that is a futile question
20 because unless they see or know the names of those witnesses
21 how would they know, so we request at this point and prior
22 to the bringing in of the jury to be sworn or the indictment
23 to be read that they produce each and every witness and the
24 name in order that we may inquire of the jury as to any
25 relationship that they may have with any government witness.

1 THE COURT: All right. Overrule that motion.

2 MR. BROWN: If the Court please, on behalf of the
3 Defendant King may we ask the Court to inquire of the jurors
4 prior to swearing them in if any of them have discussed this
5 case or if they have heard any statements dropped inadvertently
6 in their presence or where they may have been aware of it by
7 any of the marshals regarding anything in this case? May we
8 ask the Court to do that please on behalf of the defendant
9 I represent?

10 THE COURT: All right. Overrule your request.

11 MR. SILETS: Your Honor.

12 THE COURT: Yes.

13 MR. SILETS: I'm still at a loss to ascertain
14 what the procedure will be in terms of openings statements
15 or reading of the indictment. Has the Court ruled on that?
16 If so, what is the Court's ruling?

17 THE COURT: Yes. The indictment will be read.
18 The Court will make, before any indictment is read, the
19 Court will make a brief explanatory remark. The indictment
20 will be read and then the Court, on behalf of the defendants,
21 as I understood it was agreed at the time, the Court will
22 state that a plea of not guilty has been entered on behalf
23 of each defendant.

24 MR. SILETS: Is it then the Court's ruling that
25 the defendants will not be given an opportunity to make an

1 opening statement?

2 THE COURT: Well, now, gentlemen, when that
3 question was raised at the time of the pre-trial, the Court
4 understood rather clearly that the government was requesting
5 that and that the defense opposed that procedure and the
6 Court advised counsel on both sides that anybody desiring to
7 make an opening statement would have the burden of proof of
8 showing that procedure because we had not followed that
9 procedure heretofore and the Court did not propose to follow
10 it in this case, unless counsel on one side or the other
11 could persuade the Court to a different procedure.

12 Yes, Mr. Branstetter.

13 MR. BRANSTETTER: May it please the Court, I agree
14 with each statement made by the court substantially on behalf
15 of Campbell except this, I do not believe, nor certainly did
16 I on behalf of Campbell state that I did not want to make an
17 opening statement.

18 THE COURT: All right.

19 MR. BRANSTETTER: I did not agree to it then and
20 I do not agree to it now.

21 THE COURT: All right.

22 MR. SCHIFFER: On behalf of the Defendant Parks,
23 Your Honor, the Defendant Parks reserved opening until the
24 close of the government's case, I believe that by reason of
25 the indictment itself, the reading of the indictment to the

1 jury is so confusing, not only to the jury but to the defense
2 counsel as well, that unless an opportunity is presented to
3 defense counsel, those who desire, and I desire to on behalf
4 of Mr. Parks, unless we can give some kind of an opening to
5 explain the position of the defendants alleged connection with
6 the indictment, there has been a great deal of confusion in
7 the minds of the defendants, there are so many disconnected
8 acts joined in one indictment, and, therefore, I respectfully
9 ask that we be permitted to reserve our opening until the
10 close of the government's case.

11 MR. BRANSTETTER: I would like to reserve the
12 opening on behalf of Campbell until the completion of the
13 government's case also, may it please the Court, and also I
14 might respectfully suggest to the Court that some of the
15 problems that have arisen, and no doubt may arise in the
16 future, have been due to maybe one counsel for one defendant
17 agreeing to something or making a statement when all the
18 defense counsel have not even understood or agreed or made
19 such a statement.

20 I would like to state this most respectfully to
21 the Court that no defense counsel sitting at this table has
22 any right to speak for the Defendant Campbell other than
23 myself.

24 THE COURT: All right.

25 MR. SILETS: Your Honor, I would also like to

1 make the same motion that Mr. Schiffer made on behalf of the
2 Defendant Dorfman.

3 MR. BERKE: Let that be for all of the defendants,
4 Your Honor.

5 THE COURT: All right. It will stand for all
6 defendants.

7 Now, then, gentlemen, before we call the jury in
8 to have them sworn in and proceed in this case, the Court
9 wishes just to state a few words of caution in regard to any
10 arguments that you may make during the trial of this case in
11 the presence of the jury upon motions or otherwise.

12 You gentlemen are all able and very experienced
13 lawyers. You are all well aware that there are proper and
14 improper subjects for argument in the presence of the jury.
15 In this case, just as in any other case, for example, one
16 subject upon which argument would be considered improper by
17 the Court in the presence of the jury relates to the matter
18 of the custody of the jury. The Court will neither expect
19 nor permit any argument in the presence of the jury relating
20 to this matter.

21 As to other subjects, the Court will expect you
22 gentlemen, in the light of your experience and your competency
23 to exercise proper restraint in the presence of the jury.

24 The jury can be excluded at any time that any of
25 you may wish to raise a question of law or other matters that

1 should not be discussed in the presence of the jury, but
2 this again is a matter upon which the Court will expect counsel
3 to exercise proper restraint so as to not unduly interrupt
4 or prolong the trial of the case with the assurance that
5 the Court will give an opportunity at the appropriate time
6 of the trial for parties to enter any matters in the record
7 that they feel should be entered into the record and to
8 conduct any argument that they may desire to conduct in the
9 absence of the jury.

10 With reference to the custody of the jury, the
11 Court has received this morning a letter from Mr. Mansfield,
12 United States Marshal, which I think is appropriate and
13 should be entered into the record or read into the record.
14 It is addressed to the Court: "Dear Sir:

15 "This is to advise you of the necessity of asking
16 that twenty persons be administered a special oath to attend
17 jurors and prospective jurors during this term of court."

18 Is Mr. Mansfield present?

19 MARSHAL MANSFIELD: Yes.

20 THE COURT: "This is to advise you of the
21 necessity of asking that twenty persons be administered a
22 special oath to attend jurors and prospective jurors during
23 this term of court.

24 "Five of the twenty, including myself, are assigned
25 general duty relative to the U. S. Marshal's office for the

1 Eastern District of Tennessee. The remaining fifteen are
2 divided into details by shifts.

3 "When a large number of jurors need to be taken
4 to a place away from the hotel, for their personal reasons,
5 more deputies than usual are required.

6 "There will be no more than five deputies on duty
7 with the jury while they are together.

8 "Moving as a group from the hotel to the court
9 room or other public places, there will never be more than
10 three deputies in attendance.

11 "Because of the rotation of deputies, I will from
12 time to time ask that others be sworn but those given the
13 oath will be replacements and not additional deputies.

14 "Personal needs of the sixteen individual jurors
15 will be attended by the deputies who are officers of the
16 Court by oath, and only the Court's instructions will be
17 honored."

18 Now, Mr. Mansfield, it would appear that now that
19 we are not dealing with multiple panels of jurors and that
20 we are not dealing with the problems at least of anything
21 like the extent we have in the past of transporting individual
22 jurors to the homes and otherwise in connection with making
23 arrangements of this sort, it would appear to the court that
24 four, not more than four deputies at any time in attendance
25 on the jury would be adequate for the purposes.

1 All right. May we have--

2 MR. BRANSTETTER: (Interposing) May it please
3 the Court.

4 THE COURT: Yes, sir.

5 MR. HAGGERTY: May it please the Court, there is
6 one matter quite different from those we have discussed this
7 morning but that should be taken up before the jury is
8 impaneled.

9 THE COURT: All right.

10 MR. HAGGERTY: I hand to the Court a motion, an
11 affidavit and a memorandum in support and I serve the
12 government at this time, Your Honor.

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1 MR. HAGGERTY: Does your Honor care to read it
2 first before I present any argument?

3 THE COURT: All right. Yes. I have read it.
4 Just a moment, let me--

5 MR. NEAL: Your Honor, may we suggest that this
6 be a matter taken up in chambers?

7 MR. HAGGERTY: I don't think so, your Honor. I
8 don't know why it can't be taken up in open court.

9 THE COURT: Mr. Haggerty, the Court will sustain
10 your motion to disqualify the gentleman referred to in any
11 way attending upon the jury in the case and will overrule
12 the motion to declare a mistrial.

13 MR. HAGGERTY: Very well, your Honor.

14 MR. SCHIFFER: Your Honor--

15 THE COURT: Just one moment until I make proper
16 notes. All right.

17 MR. BRANSTETTER: May it please the Court, in
18 the light of the motion that was just made and the ruling
19 of the Court, and in light of the letter that was read from
20 the distinguished Marshal here, I would like to inquire as
21 to whether or not the Marshal met with, discussed this matter
22 with, or had the letter prepared by the officials of the
23 United States Government. I say that for this reason, may
24 it please the Court, that a number of times motions have
25 been made in this court and overruled by this Court suggesting

1 that the number of marshals assigned and the method of
2 operation constituted intimidation of the jury as a whole
3 or the groups that were then being locked up. And in light
4 of that motion having been overruled, and in light of the
5 letter that the Court just read preliminary to this last
6 motion, we would like to specifically inquire in order that
7 we may renew this motion that we have made with reference
8 to marshals as to what took place with reference to that
9 letter.

10 THE COURT: Well, the government has made no
11 representation at any time to the Court in any way in any
12 manner pertaining to this case other than in open court when
13 all counsel were present. This letter was delivered at the
14 Court's chambers this morning. The Court felt that it should
15 be brought in and read into the record which I have done so
16 and I have given what I believe to be the proper and appro-
17 priate instructions and I believe that I will overrule the
18 request, Mr. Branstetter.

19 MR. BRANSTETTER: We, of course, take exception
20 because the motions previously made with reference to the
21 marshals and the method of handling the jury cannot be per-
22 fected or the record kept straight unless we know all that
23 takes place with reference to it.

24 MR. SILETS: If your Honor please--

25 THE COURT: Yes, sir.

1 MR. SILETS: It has been my observation from
2 time to time to see that Mr. Sheridan, who is a chief inves-
3 tigator for the Attorney General, with the prime purpose of
4 bringing proceedings against Mr. Hoffa, I have seen him on
5 several occasions since this cause has come to trial, directing
6 several of the marshals that have been brought in from other
7 districts. I know that to be the case because I observed it.

8 I would like the Court to order and direct Mr.
9 Sheridan to desist and cease any contact he might have with
10 such marshals and the same order to be directed against any
11 member of the Department of Justice who is here on assignment
12 to prosecute this case.

13 THE COURT: Certainly that instruction will be
14 given, that is, that no attorney in any way connected with
15 this case or no other party will give any instructions to
16 any marshal or to any deputy marshal with respect to the
17 custody of the jury. The United States Marshal will see to
18 it that those orders of the Court are carried out. The
19 Court, gentlemen, it has been part of the history of this
20 Court at this time, that complaints have been made with
21 regard to the effect of publicity upon obtaining a fair
22 trial. In fact, each day last week a new motion in this
23 respect was made.

24 The Court is seeking by every means at its dis-
25 posal to assure that a fair trial will be had and to assure

1 that no juror will be influenced by any matters that he may
2 read or hear outside of the courtroom, but rather that he
3 will try this case solely on the basis of the evidence that
4 is heard in open court.

5 MR. SCHIFFER: If the Court please--

6 THE COURT: Yes, sir.

7 MR. SCHIFFER: I would like to make an inquiry
8 of the Court. For clarifications of your Honor's instructions,
9 that arguments not be made in front of the jury. I should
10 like clarification about my position insofar as my responsi-
11 bility to Mr. Parks is concerned as his lawyer.

12 Now, it is no open secret because I have indi-
13 cated in these proceedings last week that the true motivation
14 of this entire case I have laid and am laying the doorstep
15 of the Attorney General of the United States and Mr. Neal
16 and Mr. Sheridan and all the hosts of representatives of
17 the Attorney General sent down here from Washington to
18 insure what they want to secure for the Attorney General
19 because of personal animosity the conviction of certain
20 defendants here.

21 Now, Parks happens to be one of the victims of
22 that plot and I don't hesitate in talking about a framed-up
23 case. Now, what I want to know, your Honor, and I must know
24 if I am going to defend Mr. Parks at all in keeping with my
25 responsibilities, and that is, whether his defense is going

1 to be hampered by his attorney being precluded during the
2 course of these proceedings from bringing out this bias and
3 maybe outright perjury on the part of government witnesses
4 and those responsible for that kind of activity.

5 If I'm not going to be permitted to show the
6 true source of this phony indictment then I say to your Honor,
7 Parks might as well not even be here today.

8 THE COURT: Mr. Schiffer--

9 MR. SCHIFFER: He could not be defended.

10 THE COURT: Mr. Schiffer, you are a most able
11 and experienced attorney and I am certain you are aware of
12 what rights you have in that respect and I am sure that you
13 will exercise all of them on behalf of your client and the
14 Court will expect you to.

15 On the other hand, with regard to arguments of
16 matters, argument of matters that either there is nothing in
17 the record on or argument of matters which are not appro-
18 priate for argument before the jury, likewise I think you
19 are a very experienced attorney and the Court will expect
20 you to use that experience in guiding yourself and I feel
21 certain that you will.

22 MR. SCHIFFER: I simply wanted your Honor, I
23 wanted to know if your Honor may clarify any of my duties
24 in addition--

25 THE COURT: There is no limitation upon the

1 examination of witnesses intended in the instructions I have
2 given to you. You may develop your case as you think it
3 should be developed and develop it fully within the rules of
4 the laws of evidence. In the matter of making argument,
5 however, counsel are aware of what would be proper and what
6 would be improper and the Court is just asking that you use
7 that experience and use that knowledge in the trial of this
8 case so that it is not necessary for the Court to give any
9 further instructions in that regard.

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Tk 15 fls.

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1 MR. SCHIFFER: Your Honor, may I ask your Honor
2 to kindly instruct this jury that if any remark of the case
3 has been made by any marshal to them or should be made in the
4 future that they promptly report that to the Court itself?

5 THE COURT: All right.

6 MR. SCHIFFER: With regard to your Honor's state-
7 ment on the comments on the sequestration of the jury, I feel,
8 your Honor, that in keeping with fairplay, in a real and true
9 sense, that this jury right now, and I am judging by Mr.
10 Deakins' remark when he was excused from the jury the other
11 day, when he said there were more marshals than jurors for
12 one thing and you couldn't turn your head around your shoulder,
13 or something to that effect, without seeing a flock of marshals
14 hanging around.

15 Now, I believe the normal reaction of any juror in
16 this case would be the same as that of Mr. Deakins and I
17 believe that in all fairness this jury may infer that it is
18 the defense which asked the Court to the sequestration of the
19 jury when, in truth and in fact, the sequestration took place
20 at the suggestion of the government and I believe, your Honor,
21 that if we are to have a fair trial here that this jury
22 should in all fairness be told the truth, that it's the
23 government which wanted the marshals.

24 THE COURT: Well, Mr. Schiffer, the Court has given
25 instructions in that regard and has heretofore stated for the

1 record that it is the Court that has directed the steps be
2 taken and the Court has stated also the reason therefor.

3 As I have indicated, it has been a part of the
4 history of this case that there have been repeated and
5 vehement contentions that there has been adverse effect upon
6 publicity and that this adverse effect of publicity has or
7 would possibly interfere with a fair trial.

8 The Court has, therefore, exercised its judgment,
9 its best judgment and best discretion, in taking steps to
10 remove the jury from any possible influence by publicity, by
11 having them remain together and by supervising their access
12 to publicity. Therefore, by attempting to assure a fair
13 trial to each party and to both sides in the case.

14 The Court must perform its function as it sees
15 its duty, and I have done so in this instance, and I will not
16 expect counsel to make any remarks or any comments before the
17 jury with regard to this matter. If they do they are on
18 notice now that the Court will not expect to deal leniently
19 with any such improper argument.

20 MR. SCHIFFER: May I inquire whether the Court
21 would again impress upon the jury that it's not the defense
22 that has requested it because in any event the jury, with
23 the particular composition of this jury being such that they
24 have got to favor the government, I am not going to kid myself.
25 I am a realist, I have been in too many trials, this jury by

1 background is a blue-ribbon jury which is just about as well
2 handpicked as the government could pick a composition of a
3 jury, and I think that they already are in this box, are
4 going to be sworn in this box, subconsciously favoring the
5 government.

6 Now, in view of the charges, which are going to
7 be read to the jury from this indictment, we must overcome,
8 in all fairplay, the residual effect of the constant publicity
9 which took place before they even received their jury summonses
10 and their subpoenas but that in some fashion it should be
11 brought home to the jury by the Court, I believe, and I
12 respectfully suggest in fairplay that the Court should tell
13 them that this was not the request of the defense.

14 MR. REDDY: May it please the Court, at this time
15 I'd like the record to note an exception to Mr. Schiffer's
16 remarks about this being a trumped-up case and trumped-up
17 charge.

18 THE COURT: Well, I think, gentlemen, the record
19 will speak for itself in that case. The Court is attempting
20 to be just as fair and impartial in the trial of this case
21 as it can possibly be.

22 It is necessary that the Court rule upon matters
23 and motions that are made by the respective parties. If the
24 Court is in error in that respect, there are methods and means
25 of correcting those errors and the parties are well advised of

1 those methods and of those means and certainly will have full
2 access to all of those methods, including any proper motion
3 before this court or any proper actions of an appellate court.

4 MR. SCHIFFER: For the record, your Honor, I want
5 the statement made by Mr. Reddy, what I meant to indicate was
6 that this was a frame-up and not the terms used by Mr. Reddy,
7 this entire indictment.

8 MR. REDDY: Well, I except to the phrase "frame-
9 up."

10 THE COURT: Well, you gentlemen can argue these
11 matters outside of the courtroom.

12 MR. HAGGERTY: Your Honor, there are several
13 matters to take up. One is again we request your Honor to
14 instruct the marshals that the jury which was locked up not
15 be allowed to see TV because this cutting out of TV just at
16 the time the news comes, most everyone knows the time the
17 newscasts come on, and in addition this cutting out of the
18 newspapers. They should be furnished no newspapers because
19 it rises naturally in a human mind that with these cutouts and
20 this cutoff of TV that there is something unusually wrong
21 that they shouldn't hear so, therefore, I say that neither of
22 those should be permitted.

23 THE COURT: Well, the instructions hereto --

24 MR. HAGGERTY: (Interposing) We respectfully
25 request that they not be permitted.

1 THE COURT: The instructions of the Court hereto-
2 fore given will stand.

3 MR. HAGGERTY: What is the instruction of the
4 Court?

5 THE COURT: The instruction of the Court is that
6 the officers in attendance shall at all times take proper
7 and appropriate steps to see that no matters relating to the
8 trial of this case, no publicity, no newscasts of any kind,
9 shall be made available to the jury so that as I have indicated
10 this jury can try this case solely on the basis of what
11 occurs and what transpires here in open court under the
12 supervision of the Court.

13 MR. HAGGERTY: Not having knowledge of your
14 Honor's ruling I therefore take exception to your Honor's
15 reiteration of the ruling.

16 THE COURT: All right, sir.

17 MR. HAGGERTY: Now, there is one matter of
18 reference to procedure, your Honor, and I think this is the
19 time to bring it up.

20 In certain limited jurisdictions, the rule is
21 that if the defendant during the government's case introduces
22 into evidence an exhibit that that precludes the defendant
23 from making a motion for acquittal at the termination of the
24 government's case in chief.

25 Now, that rule is followed, I would say, by the

1 majority of the judges in the District of Columbia. It is not
2 followed by the federal judges in Detroit or in Chicago, to
3 my knowledge, therefore, I would like, if your Honor would
4 as a point of information, what is your Honor's position and
5 what would your Honor's ruling be on that before we become
6 embroiled with that in the actual trial?

7 THE COURT: Does the government have anything to
8 say in that regard?

9 MR. NEAL: Well, I agree with Mr. Haggerty that
10 in some jurisdictions the introduction of an exhibit by the
11 defendant while the government's case is in progress con-
12 stitutes to some extent a putting on of their case and a
13 waiver of a motion for judgment of acquittal at the close of
14 the prosecution's case.

15 THE COURT: Well.

16 MR. NEAL: We have no objection to seeing that
17 Mr. Haggerty, if he wants, and if we don't prove our case at
18 the end, then we will be willing for a judgment of acquittal --

19 THE COURT: (Interposing) The Court will expect
20 to follow that rule, namely, that it would not preclude you
21 from making a motion for a judgment for acquittal at the end
22 of the government's proof.

23 MR. HAGGERTY: Thank you, your Honor.

24 THE COURT: All right. Let's see, gentlemen, if
25 there are any other matters.

1 MR. NEAL: Your Honor, there are a couple of
2 matters that if the jury is not going to be excused before the
3 reading of the indictment.

4 THE COURT: Gentlemen, is there any reason why,
5 for the purpose of keeping the record clear, that we should
6 not begin the trial with Exhibit No. 1, leaving the exhibits
7 heretofore filed as being exhibits to the voir dire?

8 MR. BRANSTETTER: No objection.

9 THE COURT: All right. Are you desiring to take
10 up further matters before --

11 MR. NEAL: (Interposing) Well, I wondered if the
12 jury is going to be brought in and excused or do we start
13 reading the indictment?

14 THE COURT: Well, the Court would propose to
15 start the trial of this case.

16 MR. NEAL: Well.

17 MR. BRANSTETTER: May it please the Court, there
18 will be some motions on behalf of at least one defendant, the
19 Defendant Campbell, immediately following the swearing of the
20 jury, that we conceive to be the appropriate procedure in
21 judicial process and would expect, after the jury is sworn,
22 to have that opportunity.

23 THE COURT: All right.

24 MR. NEAL: There are a couple of problems with
25 the reading of the indictment that the government wants

1 instructions on.

2 THE COURT: All right. Have the jury brought in
3 and sworn at this time and then excuse them and take up any
4 appropriate motions.

5 Now, for the purpose of clarity, Mr. Mansfield,
6 let's have the jurors initially sit in some order, in the
7 order in which they were drawn, so in subsequent occasions
8 it will not be necessary but at this time it might be helpful.

End TK 15
TK 16 fls

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1 (Thereupon, the four alternate veniremen were
2 brought into the courtroom.)

3 (Thereupon, the twelve regular veniremen were
4 brought into the courtroom.)

5 THE COURT: Just have a seat. All right, ladies
6 and gentlemen of the jury, again the Court wishes to apologize
7 for the inconvenience that may have been occasioned to you in
8 the process of selecting a jury for the trial of this case.
9 I assure you that the time that has been spent in this
10 regard has been necessary. It has been appropriate. And
11 that it should be taken. And I again assure you that in no
12 respect should you allow anything to influence you whether
13 it is inconvenience or some other such matter to influence
14 each of you in the trying of this case solely on the evidence
15 that you may hear in the open court and on the instructions
16 of the court. And to conduct yourselves at all times fairly
17 and impartially so that that may be done. At this time, will
18 the clerk administer the oath to all jurors, including the
19 alternate jurors?

20 THE CLERK: Please stand and hold up your right
21 hand and repeat after me.

22 (Thereupon, the clerk read the oath to the jury
23 and the instructions of the clerk were followed by the
24 jurors.)

25 "I solemnly swear, that I will well and truly try

1 this cause now before the Court, and a true verdict render"--
2 Correction. Correction. "And a true verdict therein render,
3 according to the evidence and the law, so help me God."

4 THE COURT: All right, now, then, just have a
5 seat. As I understood earlier, gentlemen, there are some
6 matters that it would be appropriate to take up at this
7 particular point before proceeding further. If that's correct,
8 we will have to request then that you step out a moment,
9 ladies and gentlemen. We are going to try to see that you
10 have sufficient exercise, but we won't ask you to step out
11 any time when it is not absolutely necessary.

12 (Thereupon, the jury was excluded from the
13 courtroom.)

14 THE COURT: Now, then, all prospective jurors
15 not heretofore called or heretofore excused will be excused
16 at this time to report back for any further jury service at
17 such time as they may be notified by the Court.

18 Are there any matters you wish to take up with
19 the Court in the absence of the jury?

20 MR. BRANSTETTER: May it please the Court, we
21 want to object and ask the Court for a fair re-arrangement
22 of the seating. The four alternate jurors are sitting less
23 than and let the record show, less than three feet immediately
24 behind the government counsel.

25 The regular jurors beginning on the point are

1 within three to four feet of government counsel.

2 THE COURT: Mr. Branstetter, I wonder just as a
3 matter of suggestion if we were to move the four alternate
4 jurors immediately in front of the jury box, could we not
5 ask the reporter to move up forward and move the table
6 forward and in that manner improve the situation?

7 MR. BRANSTETTER: May it please the Court, again
8 there is no possibility the way this courtroom is arranged
9 for me sitting on the corner to even see the witness chair.
10 There is no possibility the way the alternate jurors were
11 previously seated for me to see them at all.

12 Now, may it please the Court, I don't understand
13 why that counsel for these defendants can't receive some
14 consideration in a seating arrangement in this courtroom
15 that is adequate. I cannot adequately make notes. There
16 are 15 people at two 8-foot tables forming a "T" here. There
17 is no way that counsel can keep records. Can makes notes.
18 I have less than a foot for my books, my papers, and my
19 note-keeping. This is inadequate, may it please the Court.

20 I respectfully insist that we are--, my defendant,
21 the one I represent, is being deprived of adequate counsel
22 as a result of the seating arrangement allowed in this
23 courtroom.

24 Now, government counsel has no prerogative I
25 would assume to sit right next to the jury when all of the

1 tables here could be moved and arranged so that all defense
2 counsel can sit and see the jury box, the witness chair,
3 and Your Honor.

4 The government counsel can move one table and
5 sit here and see the witness chair, the jury box and Your
6 Honor. Now, what injustice, what could be wrong with re-
7 arranging this courtroom so that we may sit here? So that
8 we can see and observe what goes on in the Court and so that
9 we may have adequate space to write?

10 I'm submitting this sincerely to the Court. It
11 had a hampering influence to me throughout the whole voir
12 dire. Because my papers, some were on the floor, some on
13 the desk. I believe that these tables, I would suggest are
14 eight feet long, there are one, two, three, four, five
15 people attempting to sit in an 8-foot area on this last
16 table and the last one is my left, on my left to the
17 Court's right, and I cannot see the witness chair.

18 I see no advantage at all. I just seek an
19 appropriate arrangement.

20 THE COURT: The Court has a full understanding of
21 your statement that you cannot see the witness chair.

22 MR. BRANSTETTER: I would demonstrate to the
23 Court that I cannot see the witness and the person sitting
24 in the witness chair would have to be in excess of six feet
25 tall for me to see the top of their head.

1 THE COURT: Will the officer have a seat in the
2 witness chair, please?

3 (Thereupon, the deputy marshal, Mr. Jack Evins,
4 sat in the witness chair.)

5 THE COURT: Now, then?

6 MR. BRANSTETTER: I can see when sitting down,
7 I can see from the shoulder, say, three inches down from the
8 shoulder up to the top of the officer's head, I cannot see
9 the front of the officer at all.

10 THE COURT: Well, is there any other portion of
11 his anatomy that is appropriate to observe?

12 MR. BRANSTETTER: I think this gentleman is over
13 six feet and I would suggest that none of the gentlemen are
14 that tall.

15 THE COURT: I think the instructions the Court
16 has given in that regard heretofore in that respect are
17 appropriate and should remain. And if you need additional
18 table space, during the noon recess we will make arrangements
19 for books and papers, we will make arrangements to have
20 such table space placed. Let's have the four alternates
21 chairs arranged immediately in front of the jury box and see
22 if the reporter cannot move his table forward.

23 (Thereupon, the instructions of the Court were
24 carried out.)

25 MR. BRANSTETTER: May it please the Court, for

1 the record, I believe it will show that one of the alternates
2 will be sitting within two and a half feet of government
3 counsel.

4 MR. HOOKER: We don't have the slightest objection
5 to moving around on this side of the table, if Your Honor
6 please.

7 THE COURT: All right, Mr. Hooker, will you do
8 that?

9 (Thereupon, the instructions of the Court were
10 carried out.)

11 MR. BRANSTETTER: Would it be appropriate, what
12 objection could government counsel have to shifting to the
13 other side and permitting everyone a view of what is going
14 on?

15 THE COURT: All right, the Court has considered
16 these matters and the previous orders of the court will
17 stand in that respect. Is there anything further? Is there
18 anything further before we call the jury back and call the
19 first witness?

20 MR. HAGGERTY: I have several motions to make,
21 may it please the Court.

22 THE COURT: All right.

23 MR. HAGGERTY: May it please the Court, at this
24 time I request that the government identify the witnesses
25 that they intend to call for their case in chief. I am

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1 cognizant of the fact that there is a federal statute that
2 provides in substance that the government is not required to
3 disclose the name of the witnesses before trial. I raise
4 this objection at this time for the reason that the voir
5 dire has been completed. The jury has been sworn and we are
6 now in trial. I respectfully submit that we are entitled to
7 the names of those government witnesses in chief at this
8 time. That is the first motion.

9 THE COURT: Overrule the motion.

10 MR. HAGGERTY: The second, may it please the
11 Court, is a motion to require the government to elect upon
12 which substantive count it will proceed. Consideration
13 relavent to cases demonstrate that the government can be
14 required to elect at this time. That is so because the
15 substantive counts which are set down to be tried are in no
16 wise related. The parties are not the same. The offenses
17 charged in the various counts are not parts of the same
18 transaction. Moreover, proof of the various counts must
19 depend upon evidence of a different set of facts. In such a
20 case the Supreme Court has squarely ruled that joinder cannot
21 be sustained.

22 In McElroy versus United States, 164 U. S. 81,
23 the Supreme Court held, joinder cannot be sustained where
24 the parties are not the same where the offenses are in no
25 wise part of the same transaction and must depend upon

1 evidence of a different set of facts as to each or some of
2 them.

3 A failure of the Court to put the government to
4 its election will constitute prejudice to the rights of the
5 defendant as a matter of law.

6 This is clear from a consideration of the Supreme
7 Court's decision in the Kotteakos case, Kotteakos versus
8 United States 328 U. S. 750. Likewise the decision of the
9 Court of Appeals for the Fourth Judicial Circuit in Ingram
10 versus United States, 272 Fed. 2d 567.

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1 I would anticipate, may it please the Court, that
2 the government would rely upon the case of Schaeffer vs.
3 United States, 362 U. S. 511. I will not at this time argue
4 this case but if the government relies that case I respect-
5 fully request an opportunity to answer and point out the
6 distinction between the Schaeffer case and the case at bar.

7 THE COURT: All right. What does the government
8 have to say with regard to the motion?

9 MR. NEAL: May it please the Court, this motion
10 was made in July of 1963, the motion was renewed in December
11 of 1963. On both occasions I believe extensive briefs or
12 memoranda were submitted by defendants and by the government.
13 The government was very careful to explain the basis for
14 both the factual or the legal basis for the joinder of this
15 case.

16 We think we are clearly right and the Honorable
17 Judge Gray held we were right, your Honor held we were right
18 in December. There is nothing more we can add to the memo-
19 randum we have already submitted.

20 THE COURT: All right. The Court will reserve
21 any action on that motion at this time.

22 MR. BRANSTETTER: I assume then that the other
23 defendants have the benefit of this motion to require the
24 government to elect upon which count it will proceed.

25 THE COURT: Yes.

1 MR. BRANSTETTER: I think the matter mentioned
2 is something different, may it please the Court, then asking
3 for a total severance as such. It's asking that the govern-
4 ment--at least I would like to make the motion for Larry
5 Campbell in that respect--require them to elect upon which
6 count they will proceed and then proceed to the completion
7 of that count. It's not asking that there be a total sever-
8 ance on behalf of Campbell from the others at this time but
9 the method of procedure is what is being requested.

10 THE COURT: All right. Anything further now?
11 If not, the Court proposes at this time to call the jury back.

12 MR. NEAL: Yes, your Honor, there is one thing
13 further in respect to the reading of the indictment. I under-
14 stand, the government understands that having suggested an
15 opening statement, having been told by your Honor that that
16 was not the procedure here, that there being some objection
17 the government withdrew and now proposes to read the indict-
18 ment rather than make an opening statement.

19 Your Honor said we have the burden of proof and
20 ruled we should read the indictment. We do understand, how-
21 ever, that this will mean that the defense are not entitled
22 to opening statements.

23 With respect to the reading--

24 THE COURT: (Interposing) Go ahead.

25 MR. NEAL: Does your Honor wish to--

1 THE COURT: (Interposing) No, proceed.

2 MR. NEAL: Is that the understanding under which
3 we are operating?

4 MR. SCHIFFER: I have no such understanding.

5 THE COURT: Well, the procedure will be that the
6 Court, as the Court now contemplates, that the Court will
7 make a brief explanatory statement of the matters for trial,
8 that the indictment will be read by the government counsel
9 and that the Court will state that each defendant has entered
10 a plea, that a plea of not guilty has been entered on behalf
11 of each defendant in the case.

12 We shall then proceed with the evidence.

13 MR. NEAL: May it please the Court, the first
14 count then we understand will not be read, that having been
15 severed from this trial. With respect to the second count,
16 your Honor, the two defendants in there, two persons were
17 indicted in the second count of the indictment. One of
18 those defendants, Lawrence W. Medlin, the case as to him has
19 been ordered transferred back to Nashville for trial. The
20 case as to the other defendant, James R. Hoffa, is now in
21 progress.

22 We propose to read the names of Lawrence W.
23 Medlin and James R. Hoffa in this count as defendants and
24 we request that your Honor explain that Medlin is a defendant
25 but his case is not on trial or has been transferred or

1 whatever your Honor thinks appropriate as an explanation to
2 the jury in that regard.

3 THE COURT: All right. If nothing further--

4 MR. BERKE: (Interposing) Of course, if your
5 Honor please, we object to the reading of the Medlin name
6 since Medlin is not on trial here today and, of course, we
7 can't object to him reading the name of the Defendant Hoffa
8 but we certainly think that it would be improper for him to
9 read the name of Medlin since he is not on trial here.

10 THE COURT: All right. Counts 2, 3, 4 and 5 of
11 the indictment, which are the counts that are on trial here,
12 will be read verbatim as they are stated in the indictment.
13 The Court will make the necessary explanation with regard
14 to any person indicted but not on trial.

15 All right. Let's have the jury returned.

16 (Thereupon, the jury of 12 and 4 alternates were
17 brought into open court and the following proceedings were
18 had and evidence introduced, to-wit:)

19 THE COURT: Ladies and gentlemen, the case that
20 is for trial at this time is the case of the United States
21 of America vs. James R. Hoffa, Larry Campbell, Thomas Ewing
22 Parks, Allen M. Dorfman, Nicholas J. Tweel and Ewing King.

23 The Court at this time would like to explain
24 very briefly to you the nature of the case that you are about
25 to hear. The indictment in this case originally contained

1 five counts. The first of these counts is not for trial at
2 this time or before this jury and, therefore, you will be
3 concerned in the trial of this case only with the second,
4 third, fourth and fifth counts of the indictment.

5 With respect to Counts No. 2 through 5, which
6 will be the charges, the counts that will be for trial by
7 this jury, these counts involve four alleged violations of
8 Title 18 of the United States Code, Section 1503, which is
9 commonly referred to as The Federal Obstruction Of Justice
10 Statute.

11 This statute provides in relevant part that,
12 "Whoever corruptly endeavors to influence, intimidate or
13 impede any petit juror in the discharge of his duties or
14 corruptly endeavor to influence, obstruct or impede the
15 due administration of justice, shall be punished as provided
16 by law."

End Tk 177
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1 The defendant, James R. Hoffa, is charged in each
2 of the counts, No. 2 through No. 5. The remaining defendants
3 are charged in one or other counts. The defendants Mr. Parks
4 and Mr. Campbell are charged in the third count with having
5 violated the law that I have just read to you or portions of
6 it I have read to you.

7 The defendant, Mr. King, is charged in the fifth
8 count with endeavoring to "influence, intimidate, or impede"
9 the petit, that is the trial jurors, such as yourself, in the
10 discharge of their duties in another case.

11 The defendants, Mr. Tweel and Mr. Dorfman, are
12 charged in the fourth count with endeavoring to "to influence
13 and obstruct and impede the due administration of justice."

14 Now, each count charges the respective defendants
15 named therein with a substantive offense charged in that
16 count. In addition, the defendant, Mr. Hoffa, is charged in
17 all counts, together with the defendant, Mr. Campbell, in
18 Count 3 and together with the defendant, Mr. Dorfman, in
19 Count 5 with "aiding, abetting, counseling, commanding,
20 inducing, and procuring" the commission of the offenses
21 charged in those respective counts.

22 One Lawrence W. Medlin is charged in Count No. 2
23 with committing the substantive offense charged therein and
24 with being the party aided and abetted by the defendant, Mr.
25 Hoffa, in the commission of that substantive offense.

1 Mr. Medlin's case has been separated from those
2 of the other defendants and he is not being tried at this
3 time, his case being for trial in another court.

4 You will not, therefore, be called upon to pass
5 upon his guilt or innocence but his name is mentioned in
6 Count 2 and may come up from time to time during the trial and
7 it is for this reason that I have explained his situation to
8 you.

9 At this time the government will please read
10 the Counts 2, 3, 4, and 5 of the indictment.

11 MR. REDDY: Very well; your Honor. May it please
12 the Court, ladies and gentlemen of the jury: This is the case
13 of the United States of America versus James R. Hoffa,
14 Lawrence W. Medlin, Larry Campbell, Thomas Ewing Parks,
15 Allen Dorfman, Nicholas J. Tweel, and Ewing King, Case No.
16 13,383.

17 The second count of this indictment states:

18 "The Grand Jury further charges:

19 "That on or about October 23, 1962, in the
20 Middle District of Tennessee, Nashville Division, Lawrence W.
21 Medlin and James R. Hoffa, defendants herein, James R. Hoffa
22 aiding, abetting, counseling, commanding, inducing, and
23 procuring Lawrence W. Medlin so to act, did unlawfully,
24 knowingly, wilfully, and corruptly endeavored to influence,
25 intimidate, and impede a petit juror of a United States

1 District Court in the discharge of his duty as such juror,
2 to-wit: James C. Tippens, who, as the defendants then and
3 there well knew, had been summoned for jury service in the
4 trial of United States versus James R. Hoffa and Commercial
5 Carriers, Inc. (Criminal No. 13,241) in the United States
6 District Court for the Middle District of Tennessee, Nashville,
7 Tennessee, in that Lawrence W. Medlin did meet with James C.
8 Tippens and did inform James C. Tippens that he would be paid
9 ten thousand dollars if he would vote for the acquittal of
10 James R. Hoffa in said trial.

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TK 18 fls

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1 (Title 18, United States Code, Sections 2 and 1503.)

2 "COUNT THREE

3 "The Grand Jury further charges:

4 "That during the period from on or about October
5 20, 1962, up to and including December 22, 1962, in the
6 Middle District of Tennessee, Nashville Division, Thomas Ewing
7 Parks, James R. Hoffa and Larry Campbell, defendants herein,
8 James R. Hoffa and Larry Campbell aiding, abetting, counsel-
9 ing, commanding, inducing, and procuring Thomas Ewing Parks
10 so to act, did unlawfully, knowingly, wilfully, and
11 corruptly endeavor to influence, intimidate, and impede a
12 petit juror of a United States District Court in the discharge
13 of his duty as such juror, to wit: Gratin Fields, who, as
14 the defendants then and there well knew, was then serving as
15 a petit juror in the trial of United States v. James R. Hoffa
16 and Commercial Carriers, Inc. (Criminal No. 13,241), in the
17 United States District Court for the Middle District of
18 Tennessee, Nashville Division, in that Thomas Ewing Parks did
19 meet with Carl Fields, a son of Gratin Fields, and did offer
20 and promise to Carl Fields a sum of money, that is to say five
21 thousand dollars for himself and five thousand dollars to be
22 paid to Gratin Fields, for the purpose of causing Carl Fields
23 to influence Gratin Fields to vote for the acquittal of
24 James R. Hoffa in the said case.

25 "Title 18, United States Code, Sections 2 and 1503.)

1 "COUNT FOUR

2 "The Grand Jury further charges:

3 "That in or about the month of November 1962, in
4 the Middle District of Tennessee, Nashville Division,
5 Nicholas J. Tweel, James R. Hoffa and Allen Dorfman,
6 defendants herein, James R. Hoffa and Allen Dorfman aiding,
7 abetting, counseling, commanding, inducing, and procuring
8 Nicholas J. Tweel so to act, did unlawfully, knowingly,
9 wilfully, and corruptly endeavor to influence, obstruct, and
10 impede the due administration of justice in the trial of
11 United States v. James R. Hoffa and Commercial Carriers, Inc.
12 (Criminal No. 13,241), in the United States District Court
13 for the Middle District of Tennessee, Nashville Division, in
14 that Nicholas J. Tweel did offer and promise money and things
15 of value to Dallas Hall for the purpose of inducing Dallas
16 Hall to communicate with, and to cause others to communicate
17 with, petit jurors serving in the said trial with respect
18 to the votes, opinions and decisions of the said jurors in
19 the said trial.

20 (Title 18, United States Code, Sections 2 and 1503.)

21 "COUNT FIVE

22 "The Grand Jury further charges:

23 "That on or about November 18, 1962, in the
24 Middle District of Tennessee, Nashville Division, Ewing King
25 and James R. Hoffa, defendants herein, James R. Hoffa aiding,

1 abetting, counseling, commanding, inducing, and procuring
2 Ewing King so to act, did unlawfully, knowingly, wilfully,
3 and corruptly endeavor to influence, intimidate, and impede
4 a petit juror of a United States District Court in the
5 discharge of her duty as such juror, to wit: Mrs. James M.
6 Paschal, who, as the defendants then and there well knew,
7 was then serving as a petit juror in the trial of United
8 States v. James R. Hoffa and Commercial Carriers, Inc.
9 (Criminal No. 13,241), in the United States District Court
10 for the Middle District of Tennessee, Nashville Division,
11 in that Ewing King did meet with James M. Paschal, the
12 husband of Mrs. James M. Paschal, and did offer and promise
13 to James M. Paschal assistance in getting him a promotion in
14 the Tennessee State Highway Patrol for the purpose of causing
15 him to influence Mrs. James M. Paschal to vote for the
16 acquittal of James R. Hoffa in the said case.
17 (Title 18, United States Code, Sections 2 and 1503.) "

18 Signed by Richard Palmer, the Third, Foreman.

19 And also, James F. Neal, Special Attorney,
20 Department of Justice.

End
Pk 18

Tk 18a
follows

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1 THE COURT: Ladies and gentlemen, a plea of not
2 guilty has been entered upon behalf of each defendant in the
3 case. Now, the Court would instruct you that the indictment
4 in this case is not to be considered by you as any evidence
5 in the case or any evidence of the matters therein stated.
6 The indictment is merely a method of presenting the charges
7 to be here tried.

8 All right, gentlemen, it is now approximately
9 eight minutes until twelve. Can we start with the first
10 witness?

11 MR. HOOKER: I don't think it would hardly be
12 practical, if your Honor please, we couldn't conclude.

13 MR. REDDY: No, we couldn't conclude.

14 MR. SILETS: Your Honor, I have a matter that I
15 would present to the Court outside the presence of the jury.

16 THE COURT: Well, at this time then we will
17 excuse the jury to be back at 1:30. Now, ladies and gentlemen,
18 do not discuss the case among yourselves at any time when you
19 are in recess. Likewise, do not permit anyone to discuss it
20 with you. Keep yourselves, I have asked you upon several
21 occasions, in the posture whereby you can try this case solely
22 on the basis of the evidence that is heard here in open court
23 and that is the reason that the Court has requested that you
24 be kept together in the manner in which you are kept together,
25 so that it will assist you and enable you to try this case

1 strictly on the basis of the competent testimony that is
2 admitted by the Court and in accordance with the instructions
3 of the Court.

4 All right, you go with the officers, please.

5 (Thereupon, the jury and four alternates were
6 excluded from the courtroom.)

7 THE COURT: All right.

8 MR. SILETS: Your Honor, my first motion is for
9 a judgment of acquittal for failure of the indictment in
10 Count No. 4 to set forth a charge in violation of the statutes
11 of the United States.

12 Your Honor will note that each of the charges
13 in Count No. 2, No. 3, and No. 5, relate to the indictment --
14 the charge of having contacted a particular juror with the
15 purpose of doing a particular thing.

16 Count No. 4 does not specify any such juror.

17 So, on the basis of the fact that the indictment
18 does not set forth an offense, I move for judgment of
19 acquittal.

20 THE COURT: Overrule that motion.

21 MR. SILETS: Your Honor, on behalf of the
22 Defendant Dorfman I move for a mistrial and cite three grounds.

23 Your Honor, in his remarks to the jury, stated
24 that Dorfman and Hoffa were charged as aiders and abettors in
25 Count 5. In fact they are charged in Count No. 4 because of

1 the disparity of the charges that would preclude the jury
2 from rendering a fair verdict as to Mr. Dorfman because as I
3 have stated Count No. 4 does not set forth the attempt with
4 respect to any particular juror. Count 5 does.

5 Secondly, Mr. Reddy in reading the indictment
6 said this was a case of the United States of America versus
7 James R. Hoffa, Lawrence W. Medlin, et cetera. I suggest to
8 the Court that Mr. Medlin is not on trial. This fact would
9 tend to prejudice the jury against the Defendant Dorfman
10 because Mr. Medlin is not on trial and in spite of the Court's
11 admonition to the government that Mr. Medlin was not on trial
12 and nothing should be said about him and the jury was so
13 instructed, Mr. Reddy nevertheless has the case of United
14 States versus Lawrence W. Medlin.

15 The third ground for mistrial, your Honor, is the
16 reading by Mr. Reddy of the fact that Mr. Neal is "a special
17 attorney of the Department of Justice."

18 This places in the minds of these jurors the
19 understanding that this case is a special case. A case upon
20 which a special person from the Department of Justice came
21 down to the Middle District of Tennessee to render a special
22 indictment and I cannot see in light of these three points
23 where we are starting out on a basis of fairness and I move
24 for a mistrial.

25 THE COURT: All right, I will allow the motion to

1 be overruled.

2 MR. BRANSTETTER: May it please the Court, on
3 behalf of Defendant Campbell we join in the motion for mis-
4 trial and would add one additional ground and that is, the
5 Court referred to Count No. 1 leaving the very clear inference
6 that all defendants here sitting at the table were listed as
7 defendants in Count No. 1 that had been severed.

8 Whereas, as a matter of fact, the defendants other
9 than Defendant Hoffa are not listed in Count 1 as defendants.

10 THE COURT: All right. Overrule the motion.

11 MR. BROWN: Your Honor, as I understand, the
12 general rule is still in effect?

13 THE COURT: Yes, sir, the motions made by each
14 of the parties will enure to the benefit of all parties unless
15 you state specifically to the contrary.

16 MR. ALEXANDER: May it please the Court, excuse me.

17 MR. HAGGERTY: Go ahead. Go ahead.

18 THE COURT: Yes, Mr. Haggerty.

19 MR. HAGGERTY: I confine my remarks, may it please
20 the Court, to Count No. 2. Motion for severance has been
21 made and denied and I call this to the Court's attention that
22 nowhere in the indictment is it claimed that Hoffa acted
23 directly. It means, may it please the Court, that Mr. Tippens
24 will be called as a witness to prove the alleged acts of
25 Medlin.

1 Now, one cannot aid and abet in the commission of
2 a crime unless there is another who has committed a crime.
3 I refer, your Honor, to Morgan versus United States, 159 Fed.
4 2nd 87 and cases cited. Voun Patsoll versus U. S. 163 Fed.
5 2nd 216 (spelling by Mr. Haggerty) P-a-t-s-o-l-l.

6 And United States versus Horton, 180 Fed. 2nd
7 427.

8 And United States versus Selph (spelling by Mr.
9 Haggerty) S-e-l-p-h, 82 Fed. Supp. 56.

10 Now, this would require the government to prove --

11 THE COURT: 56, Mr. Haggerty?

12 MR. HAGGERTY: Page 56. This would require the
13 government to prove first that Medlin committed the offense
14 and that Hoffa was his aider and abettor. To offer evidence
15 of Medlin's alleged participation in Count No. 2 would be
16 prejudicial in that one, Medlin would not be a compellable
17 witness to refute Tippens' testimony.

18 Two, therefore, Hoffa would be denied his
19 constitutional right to compulsory process.

PK 18A End 19
PK 19 fs.

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1 The fact that the Court has once denied severance
2 Count 2 does not relieve counsel of the recurring obligation
3 to bring to the Court's attention any subsequent matters that
4 would prejudice the defendant and also the Court, itself, is
5 under a continuing duty, even after one motion for severance
6 is denied, to be alert for any development which would deny
7 the defendant a fair trial, and I refer your Honor to the
8 Supreme Court opinion in Schaeffer vs. the United States,
9 362 U. S. 511.

10 I, therefore, again move, may it please the Court,
11 for a motion for severance of Count 2 from the indictment.

12 THE COURT: All right. The Court will reserve
13 action upon that motion pending an opportunity to read the
14 case as cited.

15 MR. NEAL: May it please the Court, will the
16 Court remember that the government has cited cases for the
17 proper position heretofore argued that the defendant has no
18 greater right to call Medlin to the stand if it were severed,
19 Medlin would be tried at one time, Hoffa would be tried at
20 the other. If Hoffa were tried first there would be no
21 greater right to call Medlin to the stand, even though they
22 be tried separate. Would the Court also remember that, as
23 we pointed out last time, that Mr. Hoffa first moved for a
24 severance from Medlin in July, which means you have the same
25 situation you have here today and that was Hoffa's request.

1 This has all been argued, your Honor. All I am
2 doing is calling the Court's attention to the matters which
3 are in the transcript.

4 MR. HAGGERTY: I wish to reply very briefly to
5 Mr. Neal. The situation is diametrically different today
6 than it was in July for the reason that Mr. Medlin is no
7 longer on trial here and we have an entirely different
8 factual situation and the law that applies thereto is en-
9 tirely different. We are confronted with one--we haven't
10 the opportunity to hear Mr. Medlin's story at the present
11 time because of the Court of Appeal's action in severing the
12 count.

13 THE COURT: All right.

14 MR. SCHIFFER: We all reserve for the record.

15 THE COURT: Beg your pardon?

16 MR. SCHIFFER: We all reserve for the record
17 joining in the same motion.

18 THE COURT: Yes. All right. Any other motion?

19 All right. We will adjourn court until 1:30.

20 At 1:30 we expect to take up the first witness on the trial
21 of the case.

22 (Thereupon, at 12:02 o'clock p.m. court was
23 adjourned for the noon recess until 1:30 o'clock p.m.)

AFTERNOON SESSION
1:30 P.M.
January 27, 1964

(Thereupon, pursuant to adjournment for the noon recess, court was in session.)

MR. REDDY: May it please the Court, at this time I would like to ask the Court to allow the government to introduce this calendar here of the months of October, November, and December 1962. We will be referring throughout the trial to various dates during those three months. I've talked to Mr. Berke and Mr. Branstetter, and they have no objection to it.

MR. BRANSTETTER: I would suggest that it was slightly out of date, may it please the Court, but other than that I have no objection.

MR. REDDY: Well, it is 1962, yes, it is a year old.

THE COURT: Unless there is some objection from counsel, then, can it be introduced as the Government's Exhibit No. 1, being a calendar as the Court understands for the months of October, November, and December 1962?

MR. REDDY: That's right.

(The 1962 calendar referred to above was marked Exhibit No. 1, for the Government, and received in evidence.)

THE COURT: The Court is of the opinion that the motion made earlier this morning by Mr. Haggerty with regard

1 and joined in by the other defendants with regard to requiring
2 the prosecution to elect as to counts that they proceed on
3 should be overruled. Likewise the motion made by Mr. Haggerty
4 immediately before the noon recess with regard to the second
5 count of the indictment should be overruled.

6 MR. REDDY: May it please the Court, we would
7 like to state at this time that the government as of last
8 night turned over the statements under the Jencks Statute of
9 Mr. Tippens, Witness Tippens, and Witness Walker, to the
10 defense and there are no Jencks statements for the Witnesses
11 Mizell and Josephine Carlton (spelling by Mr. Reddy) C-a-r-l-
12 t-o-n.

13 THE COURT: All right. Are you ready to proceed
14 and call the first witness?

15 MR. REDDY: I call Mr. Mizell.

16 THE COURT: May we have the jury returned to the
17 jury box?

18 MR. BRANSTETTER: May it please the Court, could
19 I inquire, did the Court ever rule on the question raised as
20 to whether or not the jury will be instructed not to take
21 notes or carry notes into the jury room?

22 THE COURT: The Court does not believe that under
23 all circumstances there will be any instructions with regard
24 to taking notes. The jury will not be permitted to take
25 notes.

1 MR. SILETS: Your Honor, I would like to move to
2 have witnesses excluded, if the Court please.

3 THE COURT: You are asking for the Rule?

4 MR. SCHIFFER: That is what he was asking for,
5 but we wanted to have a conference on that, your Honor. May
6 we please?

7 THE COURT: Yes, sir.

8 MR. HOOKER: Did I understand your Honor to say
9 that the jurors would not be permitted to take notes?

10 THE COURT: Yes, sir.

11 MR. HOOKER: There will be no instruction at this
12 time unless it becomes necessary?

13 THE COURT: That's correct.

14 MR. REDDY: Does the Court want to swear the
15 witnesses now, your Honor, that we will use this afternoon
16 or swear them individually? It doesn't matter.

17 THE COURT: Well, I believe in view of the
18 possible length of the trial, it will be easier to swear
19 witnesses as each witness is called.

20 MR. REDDY: As each is called, all right.

21 MR. HAGGERTY: Your Honor, did I understand that
22 you have invoked the Rule on the motion of Mr. Silets?

23 THE COURT: No, I have not. I'm inquiring of
24 counsel as to whether the Rule is requested.

25 MR. HAGGERTY: I have no objection if there can

1 be this one exception and that is Mr. Buffalino. He has the
2 records. He knows the records. He has been in charge of the
3 records. And it is my plan to have him in court so he can
4 expedite matters by having the records handy to hand to the
5 trial lawyers. Now, he is not an attorney of record, but he
6 may be, I say may be, a witness in this case for the defense.
7 With that exception I have no objection to the Rule.

8 MR. NEAL: The government has no objection, your
9 Honor, but we do have a similar exception, we have no objec-
10 tion to Mr. Haggerty's exception, we have a similar exception
11 for Mr. James Durkin who is an attorney for the government
12 and has been helping us.

13 MR. BERKE: He may be a witness?

14 MR. NEAL: He may be a witness.

15 MR. HOOKER: Just about records only.

16 MR. HAGGERTY: We have no objection to Mr. Durkin.

17 THE COURT: All right, then, the Rule will be
18 invoked and all witnesses, if there are any witnesses in the
19 courtroom, all witnesses will remain outside the courtroom
20 at all times until they are called to testify.

21 MARSHAL MANSFIELD: All witnesses please go out
22 the back door.

23 THE COURT: All witnesses will be placed under
24 the Rule and will not be permitted in the courtroom until such
25 time as they are called to testify with the exception of Mr.

1 Buffalino and Mr. Durkin. Should they be called as witnesses,
2 they will be exempt from the Rule by agreement of the parties.

3 All right, may we have the jury returned?

4 (Thereupon, the jury of twelve and four alternates
5 were brought into open court and the following proceedings
6 were had, to-wit:)

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1 MR. DALE: Raise your right hand, please. Do
2 you solemnly swear that the evidence you will give in this
3 case shall be the truth, the whole truth, and nothing but
4 the truth, so help you God?

5 MR. MIZELL: I do.

6 MR. DALE: Have a seat, sir.

7 THE COURT: Ladies and gentlemen of the jury, the
8 Court, in making an explanation with regard to the charges
9 whereas the defendants are here for trial at one place pointed
10 out that the Defendant Dorfman was charged in the fourth
11 count of the indictment, and that was correct, the Court
12 made a slip of the tongue later in describing, in saying that
13 Mr. Dorfman was charged along with Mr. Hoffa in the fifth
14 count with aiding and abetting. That was a slip of the
15 tongue. Mr. Dorfman is charged only in the fourth count of
16 the indictment.

17 All right.

18 ANDREW H. MIZELL,
19 a witness called at the instance of the United States of
20 America, being first duly sworn, was examined and testified
21 as follows:

22 DIRECT EXAMINATION BY MR. REDDY:

23 Q I will ask you to state your name and address.

24 A Andrew H. Mizell; Nashville, Tennessee.

25 Q And what is your occupation, Mr. Mizell?

1 A I am clerk of the United States District Court
2 for the Middle District of Tennessee.

3 Q And how long have you served in that capacity?

4 A Approximately three years.

5 Q I will ask you, Mr. Mizell, whether as clerk of
6 the court you have custody of the records of this court for
7 the Middle District?

8 A I do, sir.

9 Q Now, I will ask you to state whether or not the
10 records of your office for the Middle District disclose case
11 No. 13,241 as having been filed over there at some time?

12 A They do, sir.

13 Q When was it filed, Mr. Mizell?

14 A It was filed on May 18, 1962.

15 Q And what was the style of that case?

16 A United States of America versus James R. Hoffa
17 and Commercial Carriers, Inc.

18 Q Do you have what is known as terms of court in
19 the Middle District?

20 A Yes, sir, we do.

21 Q And what are they, sir?

22 A There is an October and a March term.

23 Q You have a term in March and a term in October
24 of each year.

25 A That is correct, sir.

1 Q Have you, at the request of my office and myself,
2 brought the records of your office over here with you in
3 connection with Case 13,241?

4 A I have, sir.

5 Q Those are the original court records that you
6 have.

7 A They are.

8 Q And what do they consist of, Mr. Mizell, briefly?

9 A Well, they consist of the docket sheets and all
10 orders pertaining to the trial No. 13,241.

11 Q I see. Now, what was the style of that case, the
12 name of it?

13 A The name of it was United States of America
14 versus James R. Hoffa and Commercial Carriers, Inc.

15 Q And will you refer to your records and tell the
16 Court and jury what term of court and year that the case
17 reached trial.

18 A October term, 1962.

19 Q October term, 1962?

20 A That is correct, sir.

21 Q All right, sir. I will ask you to refer to your
22 records there and state whether or not the name of James C.
23 Tippens, Mrs. James Paschal and Gratin Fields appear in the
24 record as jurors who were summoned and qualified.

25 MR. SCHIFFER: Object, Your Honor, a leading

1 question, the names appear.

2 THE COURT: Sustain the objection.

3 BY MR. REDDY:

4 Q Were you in court when the jury was impaneled,
5 Mr. Mizell?

6 A I was.

7 Q The day it was impaneled?

8 A (Witness moves head up and down.)

9 Q When was that?

10 A It was--

11 Q (Interposing) The date?

12 A I want to be sure that I understand your question.

13 The original three panels is what you are asking of or the
14 panel that tried it?

15 Q The panel that tried the case.

16 A Yes, sir, I was.

17 Q And with reference to that date, when did that
18 take place?

19 A It was impaneled on October 25th, 1962.

20 Q Did it start on October 25th, 1962, October 25th?

21 A The trial actually started on October 23rd, 1962.

22 Q And was that the date that the jury was impaneled,
23 the commencement of the impaneling?

24 A Let me correct myself a little. We began the
25 selection of a jury on October 23rd and it was completed on

1 October 25th.

2 Q I see. Now, did you call the jurors around
3 yourself on October 23rd?

4 A I did, sir.

5 Q I will ask you whether or not juror James C.
6 Tippens was called around?

7 A He was.

8 MR. SCHIFFER: Same objection, Your Honor, it's a
9 leading question.

10 THE COURT: Leading question. Sustain the
11 objection.

12 BY MR. REDDY:

13 Q What jurors were called on October 23rd then,
14 Mr. Mizell?

15 A Well, we refer to them as Jury No. 1, 2 and 3.
16 Our courts, each one of them, have three.

17 MR. SILETS: May it please the Court, the witness
18 apparently is refreshing his recollection from a document
19 not in evidence or offered for the purpose of refreshing his
20 recollection. If the government seeks to offer the document--

21 MR. REDDY: (Interposing) We are not seeking to
22 offer it. He has a right to refer to the records to refresh
23 his memory, may it please the Court.

24 THE COURT: Overrule the objection and proceed.
BY MR. REDDY:

25 Q Can you tell us what jurors were called around

1 into the box on October 23rd?

2 A Yes, sir, Jury No. 1 was the first jury called.

3 Q All right. Now, do you have a record of the
4 jurors on Jury No. 1?

5 A I do, sir.

6 Q I will ask you to look at it. Have you looked
7 at it?

8 A Yes, sir.

9 Q Now, state to the Court whether James C. Tippens
10 was on that Jury No. 1.

11 MR. SCHIFFER: Same objection.

12 THE COURT: Overruled.

13 A He was.

14 Q Now, do you have a record of the names of all of
15 the jurors who were called and sworn to try case No. 13,241?

16 A I do, sir.

17 Q Including the alternates?

18 A I do.

19 Q Do you have that record before you?

20 A Yes, I do.

21 Q All right, sir. Will you refer to it?

22 A Yes, sir.

23 Q Now, tell the Court and jury the names of the
24 jurors who were sworn to try this case on October 25th, 1962.

25 A There were 12 and four alternates. Do you want me

21-7

. Mizell-Direct

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1 to read the names?

2 Q Just read them right out.

3 A Mrs. John D. Davis, Mrs. D. M. Harrison, Jr.,

4 E. P. Horne, Mrs. Mary Hall, Alfred R. Dalton, H. G. Blackwell,

5 Mrs. Geneiva Rye, Mrs. Gladys Knight, Coleman E. Baird,

6 Mrs. James Paschal, Mrs. Matthew Walker and Gratin Fields.

7 The following selected were alternate jurors,

8 Eta Williams, Walter Harper, Mrs. William M. Jackson and

9 E. B. Woodruff.

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1 Q All right, sir, you did not read the name Tippens
2 is that right, James C. Tippens?

3 A No, I didn't.

4 Q Do you recall what happened in that connection?
5 That is, in regard to Mr. Tippens?

6 MR. SCHIFFER: Objected to. It is an improper
7 question. It is illegally framed.

8 MR. REDDY: May it please the Court, if he knows
9 of his own personal knowledge what happened. He was in the
10 court when Mr. Tippens was called and intend to show that he
11 was in there when--

12 THE COURT: (Interposing) Overrule the objection.

13 THE WITNESS: Yes, I do.

14 Q (By Mr. Reddy) Tell the Court and jury what
15 happened in regard to Mr. Tippens.

16 A Mr. Tippens' name was called and he was seated
17 in the box on October 23rd. The jury was not completed that
18 day and the next day, October 24, at the opening of court,
19 the Court announced that Mr. Tippens had been excused.

20 Q All right, sir. I will ask you to look at your
21 record again, sir, and tell the Court and jury the date that
22 the trial terminated.

23 A December 23, 1962.

24 Q All right, sir, I will ask you to refer to the
25 record again and state to the Court and jury whether any

1 other members of the jury who were sworn, the list of which
2 you have read to the Court and jury, were excused prior to
3 the date the trial terminated on December 23, 1962?

4 MR. SCHIFFER: Objected to as being entirely
5 immaterial to the issues in this case, your Honor.

6 MR. REDDY: It is very material, your Honor.

7 THE COURT: Overrule the objection.

8 THE WITNESS: Your question was were any other
9 jurors excused during the course of the trial?

10 Q (By Mr. Reddy) Yes, sir, before the trial
11 terminated on December 23, 1962.

12 A There were.

13 Q Tell the Court and jury the names of those jurors.

14 A Mrs. James Paschal and Gratin Fields. I am not
15 sure how you pronounce the first name.

16 Q All right, as to Mrs. James Paschal, what date
17 was she excused?

18 A December 6, 1962.

19 Q And as to the Juror Gratin Fields, if that is
20 the way you pronounce it, Fields, what was the date he was
21 excused?

22 A December 20, 1962.

23 Q Mr. Mizell, in giving the style of the name of
24 the case, I believe you stated the defendants were James R.
25 Hoffa and Commercial Carriers, Inc., is that correct?

1 A That's correct, sir.

2 Q I will ask you to refer to your records again
3 there and tell the Court and jury whether the case proceeded
4 to trial as to both defendants on October 23, 1962?

5 A I am afraid I didn't catch that question.

6 Q I will ask you to refer to your records and tell
7 the Court and jury whether the case proceeded to trial as to
8 both defendants?

9 A It did not.

10 Q And as to which defendant did it proceed to trial?

11 A Did it proceed?

12 Q Yes.

13 A United States of America vs. James R. Hoffa.

14 Q In other words, it only went to trial as to Mr.
15 Hoffa. Is that correct?

16 A That's correct, sir.

17 MR. REDDY: That is all.

18 MR. BERKE: No questions for Mr. Hoffa.

19 MR. BRANSTETTER: May it please the Court, we
20 would like to reserve further cross-examination of this
21 witness in the event that at some stage in the testimony
22 that he has given here may have any relationship whatsoever
23 to Campbell. So far as I see it does not. But if they seek
24 to show it we would like to reserve cross-examination.

25 THE COURT: All right.

1 MR. REDDY: I was going to ask if he was to be
2 excused as of now and subject to call, but I think Mr.
3 Schiffer has some cross-examination.

4 MR. SCHIFFER: Your Honor, I have a couple of
5 questions.

6 THE COURT: All right, Mr. Schiffer.

7 CROSS EXAMINATION

8 BY MR. SCHIFFER:

9 Q Mr. Mizell, you were present in court every day
10 during the proceedings of that trial in Nashville, were you
11 not?

12 A With the exception of one.

13 Q You were in court at the time when the jury was
14 deliberating, were you not?

15 A Yes.

16 Q And it is a fact, is it not, that at the time
17 of the discharge of that jury the majority of the jury
18 favored the Defendant Hoffa?

19 A I wouldn't know that, Mr. Schiffer.

20 Q Didn't you remark about that in the courthouse?

21 A No, sir, I couldn't have because--

22 THE COURT: (Interposing) When the jury was
23 discharged?

24 THE WITNESS: What was that?

25 Q (By Mr. Schiffer) When the jury had been

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2 excused as of now and subject to call, but I think Mr.
3 Schiffer has some cross-examination.

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5 questions.

6 THE COURT: All right, Mr. Schiffer.

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10 during the proceedings of that trial in Nashville, were you
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14 deliberating, were you not?

15 A Yes.

16 Q And it is a fact, is it not, that at the time
17 of the discharge of that jury the majority of the jury
18 favored the Defendant Hoffa?

19 A I wouldn't know that, Mr. Schiffer.

20 Q Didn't you remark about that in the courthouse?

21 A No, sir, I couldn't have because--

22 THE COURT: (Interposing) When the jury was
23 discharged?

24 THE WITNESS: What was that?

25 Q (By Mr. Schiffer) When the jury had been

1 discharged?

2 A No. No. No, sir.

3 Q Were you in court when they reported a deadlock?

4 A Yes, sir.

5 Q And the Judge discharged the jury eventually,
6 did he not?

7 A Correct.

8 Q And wasn't the vote 7 to 5 in favor of the
9 Defendant Hoffa?

10 A Not to my knowledge except what I saw in the
11 newspapers.

12 Q You read that in the paper?

13 A I did.

14 MR. HOOKER: We object to that as being utterly
15 immaterial, if your Honor please.

16 THE COURT: Sustained.

17 Q (By Mr. Schiffer) Did you have any calls,
18 pardon me, your Honor.

19 THE COURT: I sustain the objection as to what
20 he may have read in any newspaper.

21 MR. SCHIFFER: Yes, sir.

22 Q (By Mr. Schiffer) Of your own personal knowledge
23 did you have any information at all which was opposed to what
24 you had read in the paper? Without telling us what was in
25 the paper?

1 MR. HOOKER: We object to that as immaterial.

2 THE COURT: Sustained.

3 Q (By Mr. Schiffer) Of your own knowledge, do you
4 know the majority of jurors in that case, however, were in
5 favor of the defendant?

6 MR. HOOKER: We object to that.

7 THE COURT: Is there a matter before the Court?

8 MR. HOOKER: We are objecting to that on the
9 grounds it is utterly immaterial. We are not trying that
10 case again.

11 THE COURT: Overrule the objection.

12 THE WITNESS: Of my own knowledge, I know nothing
13 whatsoever about the vote of the jury or the feelings of the
14 jurors.

15 Q (By Mr. Schiffer) I'm not speaking about the
16 feelings of the jurors, I'm speaking about a fact.

17 A No, sir, I have no personal knowledge of anything
18 at all about it.

19 Q As Clerk of the court you were not told by any-
20 body and never discussed it with anybody in that court when
21 the jury was discharged that they were hopelessly deadlocked,
22 the majority being for the Defendant Hoffa?

23 MR. HOOKER: We object to that as being immaterial.

24 THE COURT: Sustain the objection.

25 MR. SCHIFFER: No further questions.

1 MR. SILETS: Your Honor, with the right to
2 reserve most of my cross-examination because so far there
3 is nothing in this testimony which relates to Mr. Dorfman,
4 I would like to ask leave to ask one question.

5 THE COURT: All right.

6 CROSS EXAMINATION

7 BY MR. SILETS:

8 Q Mr. Mizell, the names of the jurors sworn to sit
9 in judgment in that case in Nashville was that of public
10 record? Was it public knowledge as to who was sitting in
11 the jury box?

12 A Oh, yes, it is a public record.

13 Q And anybody would know about that. Is that right?

14 A Anybody that wanted to know.

15 Q That included names and addresses as well as
16 occupations?

17 A Are you speaking of after they were impaneled
18 and were sitting on the case?

19 Q Yes, sir.

20 A Yes, sir.

21 Q And to your knowledge was that fact published
22 in the local newspapers?

23 A To my knowledge, I don't know.

24 Q You don't know personally?

25 A I don't remember, no, sir.

1 MR. BROWN: If the Court please, on behalf of
2 the Defendant King we would like to reserve any cross-
3 examination of this witness as it pertains to--I know he
4 read the name of one of the jurors who is supposed to have
5 been involved in the count of my client.

6 THE COURT: All right.

7 MR. GRADY: Your Honor, on behalf of Nicholas
8 Tweel if any testimony should develop in any way that links
9 Mr. Tweel with this situation we would like to reserve our
10 cross-examination.

11 THE COURT: All right.

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1 MR. REDDY: I take it he may be excused as of now
2 subject to recall.

3 THE COURT: Subject to being recalled for any
4 further examination or cross examination.

5 MR. REDDY: I request they give us ample notice
6 or some notice so we can make arrangements to have him come
7 back. Very well, Mr. Mizell.

8 THE WITNESS: Thank you, your Honor.

9 (Witness excused.)

10 MR. NEAL: The government calls Mrs. Josephine
11 Carlton.

12 MR. DALE: Raise your right hand, please. Do
13 you solemnly swear that the evidence you will give in this
14 case shall be the truth, the whole truth, and nothing but
15 the truth, so help you God?

16 MISS CARLTON: I do.

17 MR. DALE: Have a seat, ma'am.

18 MISS JOSEPHINE CARLTON,

19 a witness called at the instance of the United States of
20 America, being first duly sworn, was examined and testified
21 as follows:

22 DIRECT EXAMINATION

23 BY MR. NEAL:

24 Q You are Miss Josephine Carlton?

25 A I am.

1 Q (Spelling) C-a-r-l-t-o-n?

2 A That is correct.

3 Q And where do you reside, Miss Carlton?

4 A 2113 West Linden, Nashville, Tennessee.

5 Q Will you speak up distinctly and talk to the
6 members of the jury?

7 I believe you are employed, Miss Carlton, by the
8 James C. Tippens Insurance Agency of Nashville, Tennessee?

9 A That is correct.

10 Q And you work directly as secretary for Mr. James
11 C. Tippens?

12 A That is correct.

13 Q Of that agency?

14 A That is right.

15 Q How long have you been so employed, Miss Carlton?

16 A It will be twenty years the first of July, this
17 year.

18 Q And were you employed or were you working in that
19 capacity on October 23rd of 1962?

20 A Yes, sir.

21 Q Miss Carlton, was Mr. Tippens in the office that
22 morning of that day?

23 A No, sir.

24 Q Where was he?

25 A He was down being questioned to perform as a juror

1 on --

2 MR. SCHIFFER: (Interposing) Objected to, your
3 Honor, this is hearsay, no foundation laid for this type of
4 a question.

5 MR. NEAL: I withdraw the question, your Honor.

6 BY MR. NEAL:

7 Q He was not in the office?

8 A He was not in the office.

9 Q What time did he return that day?

10 A I don't know the exact time, I don't remember, but
11 it was sometime in the midafternoon or early afternoon.

12 Q I see. Well, now, in his absence during that
13 morning and early afternoon, did you receive a telephone call?

14 A Yes.

15 Q From whom did you receive that telephone call?

16 A Well, I received many, I don't know -- are you
17 specifically --

18 Q (Interposing) In relation to this matter, Miss
19 Carlton.

20 A Yes.

21 Q Did you receive a call, such a call?

22 A Yes.

23 Q From whom?

24 A Mr. Medlin.

25 Q And --

1 MR. HAGGERTY: (Interposing) Just a moment, may
2 it please the Court. I object to any telephone call from Mr.
3 Medlin on behalf of the Defendant Hoffa. First of all, any
4 telephone call that this lady had from Mr. Medlin is hearsay.

5 Second, it is prejudicial and I ask for an
6 instruction limiting the admissibility of the evidence, that
7 it has no force or probative value as to the Defendant Hoffa
8 and an instruction from the Court to the effect that this
9 testimony in its present form is not at all admissible or
10 binding upon the Defendant Hoffa.

11 THE COURT: All right. Overrule the objection.

12 BY MR. NEAL:

13 Q When you received the call from Mr. Medlin, did
14 you make a note of the call?

15 A I did.

16 MR. SILETS: Your Honor --

17 Q (Interposing) And is it --

18 MR. SILETS: (Interposing) I'd like to interpose
19 an objection.

20 THE COURT: Yes.

21 MR. SILETS: Also there has been no foundation
22 laid for the fact that this was from Mr. Medlin and if that be
23 the fact she has not indicated she knows his voice, that she
24 has seen him or spoken to him before, and the very fact that
25 a phone call was received does not indicate it was from Medlin.

1 Secondly, as to Mr. Dorfman, it's apparent that
2 Mr. Dorfman was not present at the time that this occurred,
3 nor was he a party to the conversation, so as to Mr. Dorfman
4 it is strictly hearsay, having occurred outside of his
5 presence, and I move that it be stricken as to Mr. Dorfman
6 and the jury be instructed to disregard it.

7 THE COURT: Ladies and gentlemen, in the trial of
8 this case the defendants stand here for trial separately and
9 individually and the Court will from time to time instruct you
10 that you should consider evidence as to the respective
11 defendants individually.

12 The Court will instruct you at this time that
13 with regard to the testimony of this witness regarding re-
14 ceiving a telephone call, that you will not consider it as to
15 the defendant Mr. Dorfman.

16 MR. BRANSTETTER: May it please the Court, we
17 would request the same instruction on behalf of the Defendant
18 Campbell.

19 THE COURT: You will not consider it with regard
20 to any defendants other than the defendant Mr. Hoffa.

21 MR. HAGGERTY: Well, I reiterate my request that
22 this is pure hearsay as regards to Mr. Hoffa, the state of
23 the record there being no independent proof to the contrary
24 that it is pure hearsay.

25 THE COURT: All right.

1 MR. BERKE: If your Honor please, I think the
2 Court -- this does present a legal question, that perhaps you
3 should --

4 THE COURT: (Interposing) Well, as to the
5 substance of the conversation, if your objection is addressed
6 to that, the Court will sustain the objection, but as yet
7 the question has not reached that point.

8 MR. NEAL: May I proceed, your Honor?

9 THE COURT: Yes.

10 BY MR. NEAL:

11 Q Now, without getting into the substance of the
12 conversation that, as His Honor has said, we can't go into
13 at this time, did you make a notation of the call from Mr.
14 Medlin?

15 A I did.

16 Q Is it your practice to make notations of tele-
17 phone calls?

18 A Yes, sir.

19 MR. NEAL: May we have this marked as Government's
20 Exhibit No. 2, please.

21 THE COURT: I assume this will be Exhibit No. 2,
22 the calendar being Exhibit No. 1?

23 MR. NEAL: Exhibit No. 2.

24 (The notebook and pages referred to above were
25 marked Exhibit No. 2, Government Witness Miss
Carlton, for identification.)

1 BY MR. NEAL:

2 Q Miss Carlton, I show you what has been marked
3 for identification as Government's Exhibit No. 2 and ask if
4 you recognize that, ma'am?

5 A Yes, sir, this is my pad that I keep my daily
6 records of phone calls and instructions as to what work I am
7 to do.

8 Q And is this a record kept in the regular course of
9 your business?

10 A It is.

11 Q And is the regular course of your business to
12 keep such a record?

13 A It is.

14 Q And make notations therein of calls at the proper
15 time as you receive the calls?

16 A That's right.

17 Q And is it in that document you have there,
18 Government's Exhibit No. 2, which you made the notation of
19 the call of Mr. Medlin?

20 A That is correct.

21 MR. NEAL: We offer Government's Exhibit No. 2
22 into evidence.

23 MR. HAGGERTY: We request an opportunity to
24 inspect the exhibit.

25 THE COURT: All right, sir.

1 MR. NEAL: I might clarify, we are offering one
2 page of that only, but I did not want to take it out. With
3 the permission, with agreement of defense counsel, we will be
4 happy to take the page out.

5 MR. HAGGERTY: Which page are you referring to?

6 MR. NEAL: The very first page right there is
7 what we are offering.

8 MR. HAGGERTY: What particular item?

9 (Mr. Neal indicates.)

10 MR. HAGGERTY: We'll consent to taking the page
11 out, it will be more convenient.

12 MR. NEAL: We have all counsels' consent, your
13 Honor, the government has no objection to marking the page
14 rather than the book but I did not want to take the page out
15 in the absence of the Court and jury.

16 MR. BRANSTETTER: Well, may it please the Court,
17 we would request instruction that this matter have nothing
18 whatever to do with the Defendant Campbell and also instruct
19 government counsel to address the Court with reference to what
20 he is going to introduce here and take it out. He didn't want
21 to take it out before. We think that the Court should instruct
22 him if that is what is to be done we are objecting to any
23 part of it even being introduced in evidence as against the
24 Defendant Campbell.

25 THE COURT: Well, this would be received at this

1 time, ladies and gentlemen, only as to the defendant Mr. Hoff:
2 in respect to the second count of the indictment.

3 MR. HAGGERTY: We object to it, may it please the
4 Court. Again at this stage of the proof it's pure hearsay,
5 relating, in fact, the substance of the conversation.

6 THE COURT: Overrule the objection.

7 MR. NEAL: Shall I take this page out and mark it,
8 your Honor?

9 THE COURT: Well, if there is no objection to
10 it, I think it should stay in the book.

11 MR. SILETS: Is it your Honor's ruling then it's
12 only to be applied against one defendant?

13 THE COURT: Yes, it is admitted only as to one
14 defendant.

15 (The notebook and contents referred to above
16 previously marked Exhibit No. 2, Government,
17 Witness Miss Carlton, for identification, was
received in evidence.)

18 BY MR. NEAL:

19 Q Miss Carlton, after you received the call from Mr.
20 Medlin on October 23rd, while Mr. Tippens was out of the
21 office, did you make a notation of the call?

22 A I did.

23 Q And do you see the notation there on Government's
24 Exhibit No. 2?

25 A Yes, sir.

1 Q Would you read the notation, please?

2 A "Alpine 6-3958, Mr. Medlin."

3 Q Now, do you know the approximate time of that
4 call from Mr. Medlin?

5 A No, I do not remember the exact time. It was
6 some time after -- I had eaten my lunch and Mr. Tippens
7 returned to the office.

8 Q Who did Mr. Medlin want to talk to?

9 A Mr. Tippens.

10 Q Now, when Mr. Tippens came back in in the middle
11 of the afternoon, I believe you said, of October 23rd, did
12 you give Mr. Tippens the message that you received a call
13 from Mr. Medlin for him?

14 A Yes, sir, as my natural procedure I told him every-
15 thing that had happened during the morning and gave him his
16 calls.

17 Q Including the call from Mr. Medlin?

18 A Including a call from Mr. Medlin.

19 Q And what did he do then?

20 A Well, in the course of his duties, why, and in
21 time he answered the call.

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1 MR. HAGGERTY: Well, now, just a moment, I object,
2 may it please the Court, that he made the call unless she
3 has got personal knowledge. Under her testimony it is in
4 the course of the discharge of his regular duties. He made
5 the call. In the second place it is hearsay and I ask an
6 instruction from the Court to the jury that it is in no
7 way binding on the Defendant Hoffa.

8 THE COURT: That is a matter of which you may
9 cross examine. Overrule the objection.

10 MR. NEAL: You may examine, Mr. Haggerty. Your
11 Honor, we offer it only for what was read for that notation.

12 THE COURT: All right.

13 MR. HAGGERTY: May I have that please, Mr. Marshal?

14 CROSS EXAMINATION

15 BY MR. HAGGERTY:

16 Q The only thing that you have on this sheet is a
17 telephone call, AL 6-3958, and the name, Mr. Medlin, isn't
18 that true?

19 A That's right.

20 Q There is no indication on this sheet itself as
21 you testified that he was to call Mr. Medlin, is there, there
22 is no notation on the sheet that he was to call Mr. Medlin?

23 A There is a check mark over that which indicates
24 that Mr. Tippens was given the message.

25 Q That Mr. Tippens was given the message?

1 A Yes.

2 Q But there is nothing in here as you testified that
3 he was to call Mr. Medlin, isn't that correct?

4 A The fact that the number and his name was listed
5 on the book is my practice, was a telephone call that he was
6 to answer.

7 Q Now, I will ask you again, witness, and if you
8 don't understand me, you say so, there is nothing in writing
9 on this note to the effect that Mr. Tippens was to call Mr.
10 Medlin, is there?

11 A Nothing in writing, but the fact that it is there.

12 Q That is all right. Now- -

13 MR. NEAL: (Interposing) I think that the witness,
14 Your Honor, should be entitled to finish her answer. I don't
15 like Mr. Haggerty to cut her off so abruptly when she was
16 answering.

17 MR. HAGGERTY: I think I am entitled to cross
18 examination specifically to my question and I think she
19 answered the question.

20 BY MR. HAGGERTY:

21 Q Did you make any statements to a representative
22 of the Federal Bureau of Investigation?

23 A I don't understand your question.

24 Q Did you about this occurrence make any statement
25 to a representative of the FBI, an FBI man?

1 A I did.

2 Q You did, and what was the name of the FBI man
3 you made the statement to?

4 A I don't remember. I believe his name was Mr.--
5 Well, it begins with an "S".

6 Q Would it refresh your recollection if I said
7 Sheets?

8 A That's right.

9 Q Was it Mr. Sheets? Was it Mr. Sheets that you
10 made a statement to?

11 A I really don't remember his name. That doesn't
12 sound correct.

13 Q What did he look like? Was he a man about medium
14 height?

15 A Well, yes, of course that has been a year and a
16 half ago and I had no idea of trying to remember what he
17 looked like.

18 Q Did this FBI man that you made this statement to,
19 did he write down and make some notes while he was talking
20 to you?

21 A Well, he asked me some questions, now whether he
22 wrote them down I don't know.

23 Q Was it a Mr. Steele?

24 A That's correct. Mr. Steele.

25 MR. HAGGERTY: May the record show that I have

1 just been handed by Mr. Neal a statement of this witness
2 dated November 5, 1962 of the Federal Bureau of Investigation.
3 May I have an opportunity to read it?

4 THE COURT: All right.

5 MR. NEAL: The explanation, Your Honor, I turned
6 over to Mr. Haggerty last night all the Jencks statements
7 that I thought we had in our possession. I wanted to do that
8 ahead of time, but I inadvertently overlooked it. I have no
9 objection to him examining it at all.

10 THE COURT: All right.

11 BY MR. HAGGERTY:

12 Q Now, Mrs. Carlton, did Mr. Tippens return the
13 call or did you return the call?

14 A He returned the call.

15 Q Have you personal knowledge of that fact or is it
16 because that was his regular routine and way of working?

17 A I know that he returned the call.

18 Q How do you know it?

19 A Later I asked him, I said, "Did you call Mr.
20 Medlin?"

21 Q And he verified that he had. Is that right?

22 A No, he said, "I have not, but I will right now."

23 Q And did he in your presence call Mr. Medlin?

24 A Not in my presence. He was in the next office.

25 Q And that is the limit of your knowledge in

1 reference to his returning the call, is that true?

2 A That's right.

3 Q And is that your full recollection as to what
4 transpired in reference to this call from Mr. Tippens to Mr.
5 Medlin?

6 A That's right. The call came in. Mr. Tippens
7 came back. I gave him the call.

8 Q Yes.

9 A I later asked him if he had called him. He said,
10 "No, I will", and he called him and that is the extent of my
11 knowledge.

12 Q Do you recall in this statement that you made to
13 Mr. Steele on November 5, 1962, this is his report of what
14 occurred, in his interview with you. "She advised"--,
15 speaking of you as she--, "that Mr. Tippens did not return to
16 his office until one-thirty or two p. m. on October 23, 1962.
17 And she believed that Mr. Tippens attempted to call Medlin
18 at the time and was unable to reach him." Does that refresh
19 your recollection?

20 A I don't remember.

21 Q You don't remember?

22 A No.

23 Q Do you deny that you told Mr. Steele that on
24 November 5, 1962?

25 A I do not deny that I told him at that time but at

1 this time I would not say that I definitely remembered.

2 Q You can't remember that far back. I grant that it is
3 difficult, but if you did tell Mr. Steele that on November 5,
4 1962 that Mr. Tippens or Mr. Tippens attempted to call Medlin
5 but was unable to reach him, that was at that time your best
6 belief and knowledge, isn't that true?

7 A If I said that at that time, that was correct.

8 Q Did you further say that however, he returned
9 Medlin's call later and did talk to him?

10 A That is right.

11 MR. HAGGERTY: No further questions.

12 THE COURT: All right, does any other party
13 desire to question this witness any further at this time?

14 MR. BRANSTETTER: May it please the Court, we
15 would like to reserve cross examination in the event that if
16 any matters may materialize later on that would in any way
17 affect the Defendant Larry Campbell.

18 THE COURT: All right, that may stand on behalf
19 of each of the other defendants.

20 MR. BROWN: Your Honor, may we make that as a
21 standing motion, may we reserve that right as it pertains to
22 our defendants? It may become relevant then but has no
23 bearing now.

24 THE COURT: All right.

25 MR. NEAL: May it please the Court, is it clear

24-7

• Carlton-Cross

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1 that Government Exhibit No. 2 has been received in evidence?

2 THE COURT: Yes.

3 MR. NEAL: May it be passed to the jury with the
4 notation of the call to Mr. Medlin?

5 THE COURT: Yes, sir.

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1 MR. SILETS: Your Honor, before that is done I
2 would like to move to strike this lady's testimony as it
3 does not pertain to Mr. Dorfman and have the Court instruct
4 the jury while they look at this document that it does not
5 pertain to Mr. Dorfman.

6 THE COURT: Yes, the testimony of this witness
7 will be received and considered by the jury only with
8 reference to the second count of the indictment and with
9 reference to the Defendant Mr. Hoffa, not with reference to
10 any other defendant.

11 MR. HAGGERTY: May we have an instruction, Your
12 Honor, at the present state of the proof that this exhibit
13 does not pertain to Mr. Hoffa? It is not binding upon him
14 in any way?

15 THE COURT: All right, overrule that request. Is
16 there anything further of this witness or may she be
17 excused subject to recall?

18 MR. NEAL: Nothing further from the government,
19 Your Honor.

20 THE COURT: All right, you may step down.

21 MR. HOOKER: The government will call Mr. James
22 C. Tippens.

23 (Witness, Mrs. Carlton, excused.)

24 MR. BERKE: If Your Honor please, I think we have
25 a legal matter that should come up before the Court at this

1 time.

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2 (Witness Tippens sworn by the clerk.)

3 MR. BERKE: If Your Honor please, I don't think
4 Your Honor heard, we have a little legal matter that we
5 would like to take up with the court at this time.

6 THE COURT: All right, ladies and gentlemen, it
7 will be necessary as you have already evidenced earlier this
8 morning and at this time to request that the jury step out
9 from time to time in order for the Court to properly consider
10 motions and other requests by counsel. We will try to keep
11 these to the minimum if we can, but the parties have a right
12 to request that the Court hear these matters.

13 Therefore, I'm going to ask that you step out.
14 Otherwise we would have to step out of the courtroom and
15 we have a difficult problem of moving everything, so if you
16 don't mind, step out. Do you wish the witness excluded?

17 MR. BERKE: I think it would be more convenient
18 if Your Honor would.

19 THE COURT: All right.

20 (Thereupon, the witness Tippens and the venire of
21 twelve and four alternates were excluded from the courtroom
22 and the following proceedings were had to-wit:)

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1 THE COURT: All right.

2 MR. BERKE: May it please the Court, of course,
3 we have been handed the Jencks statements and we are in
4 position thereby to know with reasonable anticipation what
5 the testimony of this witness will be.

6 We, of course, would like to take up a legal
7 question with the Court. We think this is a very material
8 matter. This is a matter that the Court will have to pass
9 upon and it vitally affects the trial of this case, not only
10 as to the Defendant Hoffa but also as to the other defendants

11 This same question, we know, will come up not
12 only as to the Defendant Hoffa but as to some of the other
13 defendants and, of course, we are trying, if your Honor
14 please, to try to keep down the number of objections as much
15 as possible so this objection that I am making to this testi-
16 mony of Mr. Tippens will apply to all defendants and by
17 agreement they stated that I would present this matter to
18 the Court and perhaps Mr. Silets might want to answer the
19 government. He has another little matter in connection
20 therewith.

21 Now, of course, we will object to the testimony
22 of Mr. Tippens, if your Honor please, and we might state as
23 a predicate based on the Jencks statement that Mr. Tippens
24 supposedly will testify that a defendant who is not now on
25 trial, Mr. Medlin, approached him with reference to using

1 some influence in the case in which the juror might possibly
2 be seated or might be called as a juror to deliberate on the
3 case.

4 Now, briefs have been filed by the government
5 and we have filed briefs.

6 Now, from a reading of the briefs there are
7 certain things that we will concede and certain things that
8 are in direct issue between the defendant and the government.
9 Let's first decide the things that we are agreed upon first,
10 your Honor. These are substantive offenses. They are
11 unrelated offenses but we agree that even though this case
12 is not being tried on the first count of the indictment,
13 which is the conspiracy count, that it is not necessary to
14 determine whether or not statements made by co-defendants
15 or co-conspirators are competent against the remaining
16 conspirator or defendant in the case.

17 In other words, even in a substantive act we
18 concede that if a conspiracy is shown that they can introduce
19 statements of a co-conspirator, so we get that out of the
20 way. That is no problem.

21 There seems to be no question from the briefs
22 filed by the government and those filed by the defendants
23 that in order for a statement of a co-conspirator to be
24 admissible against an alleged conspirator the existence of
25 the conspiracy must be shown and the connection established

1 and it must be established by evidence and, of course, the
2 opinions are only under aliunde which means otherwise, other
3 than the statement itself, they must establish a conspiracy
4 first. Now, the government concedes that, we concede that.
5 The only argument that I can see between the government and
6 the defendant is in the order of proof.

7 MR. HOOKER: That is correct.

8 MR. BERKE: Mr. Hooker says that is correct. In
9 other words, a statement of a conspirator is never admissible
10 against an alleged conspirator unless there is evidence that
11 a conspiracy, in fact, existed at the time. Now, not before
12 the conspiracy or not after the conspiracy is over but at
13 the time of the conspiracy.

14 Now, if that be true and if I am correct, and I
15 seem to be correct from the statement of counsel that the
16 only problem then is the order of proof.

17 Now, it is apparent from the order of proof what
18 the government is doing. It is trying to prove first by
19 Mr. Tippens' statement made by a co-conspirator, which is
20 clearly hearsay, in other words, especially in the second
21 count of the indictment, Mr. Medlin is not even a party to
22 this indictment here. Mr. Tippens is attempting to testify
23 first before any proof of conspiracy, before any proof that
24 Mr. Hoffa even knows Mr. Medlin, and I think the government
25 will concede that they do not know each other, have never

1 met or seen each other, as far as I know, except perhaps
2 when they pled to the indictment, they are attempting to show
3 that a Mr. Medlin, unknown to Mr. Hoffa, made a statement to
4 Mr. Tippens hoping that the juror would thereby be comforted
5 in the fact that Mr. Hoffa had something to do with it.

6 Now, why is it that the government now, if your
7 Honor please, is seeking to introduce this statement before
8 proving a conspiracy? They concede that they must prove a
9 conspiracy before this is admissible. Why are they trying
10 to bring in the statement first if they have evidence of a
11 conspiracy?

12 I say if they have evidence of a conspiracy, and
13 it is conceded that they must prove the conspiracy first, not
14 by the statements, why don't they produce the evidence showing
15 the conspiracy first?

16 That only they can answer, but we say, your Honor
17 that this Court will, of course, go by precedents by decisions
18 of our courts. We are in the Sixth Circuit. The Sixth Cir-
19 cuit has definitely laid down the rule that before any state-
20 ments of co-conspirators are admissible in evidence proof of
21 the conspiracy must first be established.

22 Now, we rely, if your Honor please, on the
23 Nibling case and before I get into the Nibling case, and
24 since this is so important, and even though the government
25 admits what I have stated up until now, I do want to read

1 just what the rule is, not on the order of proof but the
2 admissibility of evidence, and that has been decided by this
3 circuit in Continental Baking Company vs. United States, 281
4 Federal 2d 187, wherein they approved the Minter case, which
5 was from a different circuit.

6 Now, what does the Minter case say? Five dif-
7 ferent things, five different rules which are conceded.

8 First, to render evidence, and I am reading from
9 the Minter case and the Continental Baking Company case,
10 first, the first thing it says is to render evidence of the
11 acts or declarations of alleged conspirator admissible against
12 an alleged conspirator the existence of the conspiracy must
13 be shown and the connection of the latter therewith estab-
14 lished. That's one.

15 2. Declarations of one conspirator to another
16 are not competent evidence to establish the connection of a
17 third person with the conspiracy.

18 3. The existence of the conspiracy cannot be
19 established against an alleged conspirator by evidence of
20 the acts or declarations of his alleged co-conspirators done
21 or made in his absence. And be sure to note, your Honor,
22 that this says "acts or declarations", so it not only applies
23 to what a co-conspirator says but also what he does.

24 4. The acts or declarations of a conspirator
25 prior to the formation of a conspiracy or after its termination

1 are not admissible against his co-conspirator, which I have
2 stated, if this is before or after a conspiracy then it is
3 not admissible.

4 And, last, the acts and declarations of a con-
5 spirator to be admissible against his co-conspirators must
6 occur during the existence of the conspiracy and must be in
7 furtherance of its object.

8 Now, if the government says that the only question
9 is the order of proof then we state that this Court is bound
10 and should be bound by the opinions of this circuit and in
11 the Nibling case the Court said this, and mind you the very
12 first word is the key to the whole situation, and the Court
13 says, "Before, the declarations of co-conspirators can be
14 received in evidence against one charged with participating
15 in a conspiracy it must be shown by independent evidence
16 that the conspiracy existed and that the accused was a party
17 to it at the time the declarations were made."

End Tk 25
Tk 26 fls.

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1 In other words, before these things are admissible.
2 Then it says further, commenting on this case and after citing
3 authorities, proof of Scott's occupancy of a vacant room or
4 apartment in appellant's building was not a sufficient showing
5 of this precedent condition.

6 In other words, they did show some circumstances
7 before they tried to admit the declarations and they said that
8 that was not a sufficient showing precedent to this testimony.
9 Now, we have received a brief, your Honor, and I have studied
10 this carefully and I have spent many hours at the library on
11 this case, and it is a fascinating subject, and I became
12 intrigued with it and I know that your Honor is a scholar, I
13 know that your Honor recognizes a legal principle, that your
14 Honor is not concerned with who the defendants might be, but
15 I notice that in the government's brief they said that the
16 Landers case which is from the Fifth Circuit is the rule that
17 this court should follow.

18 First of all, I say that this court is and should
19 be bound by the decisions of the appellate court of this
20 district and not, that is of this district and not of the
21 Fifth Circuit.

22 But I read the Landers case and that is a late
23 case and it is a 1962 case and there are a lot of points in
24 the Landers case which are very easy to understand when you
25 read the Landers case and in the first place in the Landers

1 case there was proof of a conspiracy other than the alleged
2 declarations because in the Landers case it says this.

3 With all this certainly we cannot agree with
4 appellant that there was no independent evidence of the
5 existence of the conspiracy or that there was no independent
6 evidence linking her to it well in advance of Dunbar's
7 conversation with the agent on February 16th.

8 Now, in addition in the Landers case there was no
9 objection made to the testimony. In other words, it just went
10 in without any objection made by the defendant and the Court
11 says, we cannot say, of course, what the ruling of the trial
12 judge might have made had he then presented with a timely
13 objection to Jessups' testimony. Plainly it would have been
14 within his discretion to require the government to come for-
15 ward with some independent evidence concerning this particular
16 defendant Bernice Landers before allowing Jessups to resume
17 his chronological narration of Dunbar's statement about her.

18 And then they went on and said it was not
19 prejudicial error because in this particular case it was a
20 rather involved case and the government undertook to produce
21 the evidence in chronological order and, therefore, in the
22 Fifth Circuit they said he had a certain amount of discretion
23 and, therefore, said that whatever error it was it was harmless
24 error.

25 But, if your Honor please, we notice that for some

1 reason that none of the courts have discussed, discovered, or
2 ever mentioned as far as I can see a ruling by the United
3 States Supreme Court in the McGinnis versus United States,
4 256 Fed., page 265.

5 THE COURT: 256?

6 MR. BERKE: Yes, your Honor, 256 Fed. on page
7 265.

8 THE COURT: How could that be a Supreme Court
9 case?

10 MR. BERKE: The circuit court case, your Honor,
11 but this has been cited by the Supreme Court.

12 Now, here is what it said. In that case they
13 are speaking there about the conspiracy, but this change or
14 addition which has found its way into the crime of conspiracy
15 cannot be held to excuse the government from establishing that
16 a conspiracy in fact existed and this should be established
17 before evidence of the overt act to affect the object of the
18 conspiracy is received. It is now too common in the every-
19 day trial of cases the conspiracy to permit proof of alleged
20 overt acts which inflame and prejudice the minds of juries
21 without first sufficiently proving that a conspiracy in fact
22 exists. Better practice for the due administration of the law
23 is to require evidence establishing a conspiracy before
24 evidence is received as proof of overt acts to affect the
25 object of the conspiracy.

1 Now, if your Honor please, we would like to call
2 the Court's attention to the case of Krulewitch, which is a
3 United States Supreme Court case cited in 69 Supreme Court,
4 and we are quoting from page 723.

5 Now, the Krulewitch case, if your Honor please,
6 is a perfect example --

7 THE COURT: What was the citation, please?

8 MR. BERKE: 69 Supreme Court Reporter, and we are
9 quoting from page 723. In this case the United States Supreme
10 Court said this.

11 When the trial starts the accused feels the
12 full impact of the conspiracy strategy. Strictly the prose-
13 cution should first establish prima facie the conspiracy and
14 identify the conspirators, after which evidence of acts and
15 declarations of each in the course of its execution are
16 admissible against all.

17 But the order of proof of so sprawling a charge
18 is difficult for a judge to control. As a practical matter
19 the accused often is confronted with a hodgepodge of acts and
20 statements by others which he may never have authorized or
21 intended or even known about but which helped to persuade the
22 jury of the existence of the conspiracy itself.

23 In other words, a conspiracy often is proved by
24 evidence that is admissible only upon the assumption that a
25 conspiracy existed. The naive assumption that prejudicial

1 effects can be overcome by instructions to the jury, all
2 practicing lawyers know to be unmitigated fiction.

3 Now, what will the Court do constantly throughout
4 this trial? If it adopts the procedure and the order of proof
5 that the government is insisting that these defendants be
6 faced with and forced with, remember also, your Honor, that
7 it is the government that brought this indictment. They could
8 have brought separate indictments against each defendant.
9 They could have tried these cases separately. The defendants
10 have repeatedly begged for separate instructions.

TK 26 End
TK 26A fls

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1 Now, to simplify my argument, if we have six
2 defendants here, the Court will constantly tell the jury,
3 now, this is competent against the Defendant No. 1. Do not
4 consider it against No. 2, 3, 4, 5 and 6.

5 Now, you get another statement and we will be
6 here a number of weeks, you will have another statement, you
7 tell the jury, now, this is competent against 2 and 3. Do
8 not consider it against 1, 4, 5 and 6.

9 Then you say, this is competent against 6, do
10 not consider it against 1, 2, 3, 4 and 5.

11 If your Honor please, in a case which Krulewitch
12 cited which is the Skidmore vs. Baltimore and Ohio Railroad,
13 Sixth Circuit, 167 Fed. 6164, the Court considered these
14 items and said that here is a situation where the Court con-
15 stantly tells juries under limited instructions wanting the
16 jury to set this aside, remember that this applies to this
17 defendant and not to the others and they commented that even
18 a third year law student who has some knowledge of the law,
19 couldn't conceivably keep all these things together in his
20 head if there was any way at all.

21 I do concede that if instead of having 12 jurors
22 there, your Honor, if we had an IBM machine there if we fed
23 the information about each defendant into cards where they
24 could keep it separated, then we could take the IBM machine
25 and say that this much evidence appeared against Defendant 1,

1 2, 3 and so forth. But as a practical we know we don't do
2 that. We can't do that. And certainly as the Supreme Court
3 said to think that by simply telling the jury now you consider
4 this only against so-and-so and constantly over a period of
5 weeks to say that the jury can possibly keep these things in
6 mind, is as the Supreme Court said pure unmitigated fiction.
7 They just can't do that. It is impossible.

8 Now, then, under that circumstance what is the
9 situation here?

10 The situation is this, it will be impossible as
11 a practical matter and let's be practical about this case
12 because this is going to be a long case, there are going to
13 be a lot of exhibits and we know that the jury will not be
14 able to keep all this separated.

15 Now, we are making a timely objection. We would
16 like to call the Court's attention to one case that was tried
17 by Judge Miller in Nashville where there was no objection
18 made. It was a narcotics case. In that case, if your Honor
19 please, there were two defendants. There was Stampley and
20 Glenn. This is the case of Glenn. It seems that Stampley
21 was going to get some narcotics from Glenn and he told this
22 agent, it was two o'clock in the morning, he said, "Now I am
23 going to get it. Glenn is coming in by train. I will get
24 it from him and I will meet you shortly."

25 Well, it was true, within an hour later he met

1 him and said that he had got these narcotics from Glenn who
2 just came off the train. And the Defendant Glenn didn't
3 even object to it. And the Court held that since there was
4 no evidence of a conspiracy introduced prior to this state-
5 ment or as a matter of fact at any time, that they would
6 reverse the case in spite of the fact that there was no
7 objection.

8 The Court said this, and this is reported in
9 271 Fed 2d, Page 882. "Had counsel for Glenn objected to the
10 conversations between Agent Davis and Stempley, none of which
11 were in Glenn's presence, the Court would have been required
12 to instruct the jury that they were admissible only against
13 Stempley and not against Glenn."

End Tk 2614
Tk 27 fls.

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1 Furthermore, Glenn was entitled to have the
2 jury instructed that this testimony should not be considered
3 as evidence against him. His counsel made no objections, and
4 of course, they reversed it.

5 Now, then, if Your Honor please, we would like
6 to call the Court's attention to the latest word on this
7 subject and this opinion was just filed on January 14th,
8 1964, which was less than two weeks ago, and it's the case of
9 United States of America versus Wortman (spelling) W-O-R-T-M-A-N,
10 and we have the entire case here if the Court would like to
11 see it, but we would like to call the Court's attention to
12 the fact that in that particular case the government sought to
13 have admitted a typewritten agreement, only a copy, the
14 original seems to have been lost, and Moore testified about
15 this agreement and stated that that was the agreement that
16 he had with the alleged co-conspirator Worthman and here is
17 what the United States Supreme Court said, and I say this
18 is the latest word on the subject.

19 MR. SILETS: Seventh Circuit.

20 MR. BERKE: Seventh Circuit. It was handed to
21 me, a photostatic copy of it, and I do not--, let me see if
22 I have the citation on that, Your Honor. Let me read from
23 this opinion, Your Honor.

24 "The Moore-Wortman agreement was admitted
25 against Defendants Wortman and Moore without any reservation

1 at a time when admittedly there was no proof of a conspiracy,
2 in fact, it was offered for that purpose. It was a declaration
3 by one alleged conspirator against another made out of the
4 latter's presence and without proof that he had in any manner
5 authorized it."

6 We cite a few of the many cases which have held
7 such declarations inadmissible.

8 Then they cite a number of cases, including the
9 Krulewitch case which I just read. The Court said there,
10 "Glasser", and this is a Supreme Court case, "In Glasser the
11 Court said that such declarations are admissible over the
12 objection of an alleged co-conspirator who was not present
13 when they were made only if there is proof aliunde that he
14 is connected with the conspiracy."

15 The Court said in Tripp, the Court said this,
16 that is, Tripp is the style of the case, "The existence of
17 the conspiracy cannot be sustained against an alleged
18 conspirator by evidence of the acts or declarations of his
19 alleged co-conspirators done or made in his absence. Such
20 declarations are admissible against him only when there is
21 proof aliunde of his connection with the conspiracy."

22 And then they cited in pancey, the Court commented
23 upon the prejudicial nature of the testimony of an alleged
24 co-conspirator admitted in violation of the rule, which is
25 pertinent here, leaving the hearsay testimony out of

1 consideration destroys the case, in fact, taking it into
2 consideration destroys it in law.

3 Now, the government in that case, as in this
4 case, attempted to prove this before proving the conspiracy
5 and the case says as follows: "The government in its
6 argument that the testimony under discussion was properly
7 admitted states if the appellate became members of a
8 conspiracy on July 1st, 1944 to conceal material facts from
9 the Internal Revenue Service, as we submit they obviously
10 did, there is certainly no substance to the argument that
11 proof of that agreement and activities which followed it
12 should have been excluded from evidence."

13 Now, here is what the Court said, "In the
14 abstract we see nothing wrong with this argument but it is
15 beside the issue. The point is that at the time the Moore-
16 Wortman agreement, as well as the other exhibits which we
17 have discussed were admitted, there was no proof aliunde of a
18 conspiracy. The agreement was admitted to establish the
19 conspiracy without proof that the defendant Wortman was a
20 party to it."

21 Now, it is not enough that the government will
22 say, "Well, if Your Honor please, we will make it competent
23 at some time later. We are going to show the conspiracy.
24 We will be able to connect this up."

25 In the first place, the damage has already been

1 done and it's obvious that that is the reason that they are
2 trying to go at it in this manner.

3 Now, they knew that rule of the Ninth Circuit.
4 They are trying to get around it and evidence of this fact
5 is the fact that they have briefed this very question that
6 they are trying to urge on this court, out of order testimony.
7 In other words, trying to prove a statement before they prove
8 the conspiracy.

9 Now, what does that do? If the Court permits
10 them to prove that statement they hope by producing this
11 statement to some way establish the conspiracy by the state-
12 ment itself and, as the Court said in the Glasser case, they
13 are trying to pull themselves up by their own boot straps.
14 In other words, they are trying to use these statements to
15 in effect say that a conspiracy was established or they
16 might say by proving the different statements in Count 2,
17 proving statements in Counts 3, 4 and 5, wrapping them all
18 up together in a ribbon, they say that in itself proves a
19 conspiracy.

20 Well, if Your Honor please, if there is no proof
21 of a conspiracy and you have nothing but statements and you
22 have four such instances in four different counts, then you
23 have four times nothing and you still have nothing. In
24 other words, you can't prove the conspiracy by the statements
25 themselves.

1 Now, there was some mention somewhere in the
2 brief that, "Well, this is going on, it's part of the
3 res gestae, it's part of the thing that is working itself out."

4 Actually, the law of conspiracy is the law of
5 agency, that is what it really is, and the courts have held
6 that.

7 In other words, this Court knows that you can't
8 prove agency by the statements of an agent. Before you can
9 prove statements by an agent you have to show that it is
10 with authority and in the course of his business and he was
11 authorized to do it.

12 Now, you can't consider Medlin just sitting right
13 there with Tippens testifying that Medlin was an agent for
14 Hoffa. There is no showing to that effect. There is no
15 showing he was an agent, there is no showing he was authorized
16 to make that statement. To allow that would involve anybody--
17 if a man is caught in a crime and he is apprehended or he
18 knows he is about to be apprehended, and let's say he did
19 conspire with some friend of his, how easy is it to shield
20 that friend and say that somebody else had told him so, and
21 there are certain safeguards that the court, in the exercise
22 of the right to a fair trial, that the court should make the
23 government at this time show that a conspiracy in fact
24 existed.

25 Now, the res gestae does not apply in a case of

1 this type. First of all, this evidence is not part of the
2 res gestae but a perfect example of this, which I found very
3 interesting, was in the Eighth Circuit, if Your Honor please,
4 in the case of Ferina (spelling) F-E-R-I-N-A versus the
5 United States in 302 Fed. 2d Page 95, and this was an
6 obstruction of justice case.

7 It appeared, if Your Honor please, that A was
8 being tried, just as my client is being tried for the
9 obstruction of justice, B was the witness in the case, C and
10 D approached B, who is a witness for the government, and
11 very viciously assaulted him and during the assault, and
12 you might say this is an excellent example if the res gestae
13 were applicable that would be right there at the time, C and
14 D told B that A sent them to beat him up so that he would
15 not be in position to testify in that case and the Court said
16 this, and they reduced it all to A, B and C, they gave the
17 names but said it would be easier to follow. Here is what
18 they said:

19 A is waiting trial on a criminal charge and it's
20 reasonable to be anticipated that B will be a witness against
21 him. C and D waits for B at his city residence. A is not
22 in the vicinity or even in the city. They state to B, "A has
23 sent us to beat you up so badly that you will be unable to
24 testify against him."

25 They proceed to assault him. It is manifested on

1 the trial of C and D on the charge of obstructing justice
2 proof of the assault with the accompanying declaration would
3 properly and adequately support their conviction on that
4 charge. It is also manifest that on the trial of A on the
5 same charge, absent other evidence connecting A with C and
6 D, the proof would not be such as to sustain the former's
7 conviction. The fact that C and D had made known to B that
8 they were assaulting him because of his expected conduct in
9 relation to A would give rise to the supicion that A had
10 arranged for the assault but such suspicion would not furnish
11 A adequate evidentiary base for his conviction.

12 Now, the Court said this on the doctrine of agency,
13 is just simply what this boils down to, "to connect bias with
14 the occurrence at the Sheath resident the government relies
15 upon the theory of conspiracy and the closely related theory
16 of agency, Biasi claims that his alleged connection with that
17 occurrence cannot be sustained upon either theory. In that
18 connection he relies upon two well known rules of law. One
19 of those rules is stated as follows in a recent case, Tripp
20 case, Tripp versus United States, Tenth Circuit, "the existence
21 of a conspiracy cannot be established against an alleged
22 conspirator by evidence of the acts or declarations of his
23 alleged co-conspirators done or made in his absence. Such
24 declarations are admissible against him only where there is
25 proof aliunde, that is, otherwise, of his connection with

1 the conspiracy.

2 "The other rule relied on by Biasi is stated as
3 follows in 2 Jones on Evidence, Fifth Edition, Page 625,"
4 'the fact of an agency cannot be established by the
5 declarations of an agent, no matter how publicly made.'

6 "It is the view of the court that Biasi's
7 reliance upon those rules of law is well placed. It is the
8 holding of the court that the evidence is insufficient to
9 sustain the conviction of Biasi."

End
Tk 27

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1 Which is assigned here but not referred to. In
2 view of the holding of the Court just stated it is unnecessary
3 to consider them.

4 Now, in this latest case, if your Honor please,
5 which is the Wortman case, which we will probably have to
6 furnish the Court this copy which we were able to obtain, the
7 Court said this.

8 Our exhaustive study of this voluminous record
9 bolsters our appreciation of the statement in the Krulewitch
10 versus United States, 336 U. S. 440 by Mr. Justice Jackson
11 in his concurrent opinion.

12 As a practical matter and before I read further,
13 if your Honor please, this fits this case to a "T" because
14 it appears, the same questions appeared in that case as will
15 appear in this case and that is that the length of the trial
16 and the voluminous records and here is what the Court said.

17 As a practical matter, the accused often is
18 confronted with a hodgepodge of acts and statements by others
19 which he may never have authorized or intended or even known
20 about but which helped to persuade the jury of the existence
21 of the conspiracy itself.

22 And if your Honor has this, I'm reading on page
23 20. The naive assumption that prejudicial effects can be
24 overcome by instructions to the jury, all practicing lawyers
25 know to be unmitigated fiction and again they cite the very

1 same thing.

2 That statement could have been written for this
3 case when an indictment difficult to comprehend because of
4 its verbosity with voluminous exhibits, many of technical
5 nature, with evidence and admitted on promise by the prosecu-
6 tion that it later would be connected and with the jury left
7 to make the determination and with a trial that lasted six
8 weeks is a matter of grave doubt as to whether the verdict
9 reached after four days of deliberation resulted from a proper
10 appraisalment of the record, confusion or exhaustion.

11 Nothing we have said is any reflection on the
12 manner in which the case was tried by Judge Jergens. We
13 doubt if any other judge could have done better. The un-
14 fortunate situation arises from the inherent nature of the
15 crime of conspiracy, particularly as it was sought to be
16 employed by the government in this case. We hold that the
17 evidence which we have previously discussed was erroneously
18 admitted. The error was prejudicial inasmuch as it was
19 calculated to produce a substantial influence on a jury
20 verdict.

21 So, we say, your Honor, that if this Court will
22 depart from the rule announced by the Sixth Circuit, then
23 even if the Court seeks to adopt the rule announced by the
24 Fifth Circuit, the Fifth Circuit does not in the Landers case
25 state that it would have so held although it has held in other

1 cases in cases involving multiple defendants in multiple
2 substantive acts, we think, if your Honor please, that if any
3 doubt should be resolved it should be resolved in favor of
4 the defendant.

5 Why is it more difficult for the government, now,
6 I don't know, they know their case, why is it more difficult
7 for them first to prove as the Sixth Circuit said, prove the
8 conspiracy first and then bring in your statements because
9 then, your Honor, you won't have to make all these various
10 instructions to the jury, say, we will now disregard it as to
11 this defendant and that defendant.

12 If they show a conspiracy in each individual
13 count, then it will be admissible against all defendants. We
14 are prepared to defend this case against the conspiracy, but
15 we have no way to defend the prejudicial effect which will
16 have on the jury if they hear the statements to start with,
17 because we say that the jurors' brain, a lawyer's brain, and
18 many times a judge's brain, does not have the compartments
19 in which it can set aside certain evidence and hold it there
20 in place throughout a six-weeks' trial and many of the cases
21 which the government cites are cases where there was one
22 defendant or perhaps two defendants with one exception, and
23 that was the Schaeffer case, there might have been another
24 exception, but the majority of the cases were single defendants
25 where it was not too difficult for the jury to keep that in

1 mind.

2 And we say the Court should follow the Nibbelink
3 case which is this circuit. We think the order of proof
4 should not be relaxed in favor of the government. If anything
5 at all the government because of the fact that they are
6 insisting on trying all these parties together, they are
7 insisting that prejudice in one count shall relate over to
8 the next count.

9 That this court should require them in accordance
10 with the decisions of our courts hold that they are first
11 required to prove the conspiracy.

12 THE COURT: All right.

13 MR. NEAL: May it please the Court, we have
14 passed up an answer to the memorandum in response to our
15 original memorandum of law on this question. There is not
16 as Mr. Berke fairly said, there is not too much agreement
17 with the number of the principals. The Court knows them.
18 The rules relating to the admission of acts and the statements
19 of a co-conspirator of one co-conspirator against another
20 conspirator must be in furtherance of the conspiracy. The
21 declarant should be shown to be a participant in the conspiracy
22 at the time of the act or statement.

23 There is no dispute about that. There is a
24 dispute about the discretion of the Court to permit -- to
25 rule on the order of proof.

1 In the first place, your Honor, the rule with
2 respect to statements of co-conspirators is only a part of
3 the broader rule. That is that the acts and statements of an
4 agent made within the scope of his authority from the
5 principal are admissible against the principal. Now, in this
6 case, your Honor, we have that rule which is involved.

7 We will prove that Medlin approached Mr. Tippens
8 with an improper offer. We will prove that the Defendant
9 Hoffa aided, abetted, induced, counseled, commanded, and
10 procured this action by his agent Medlin.

11 However, your Honor, it is necessary for us to
12 first prove that Medlin did what he did. He is charged here
13 as the principal. The Defendant Hoffa is charged -- I beg
14 your pardon, he is charged as the actor. In making the
15 approach. The Defendant Hoffa is charged as the aider and
16 abettor and the inducer, the principal of the agent Medlin.
17 It would be somewhat absurd, your Honor, for us to start out
18 to prove that Hoffa induced something before showing what it
19 was that he induced and that is the big principle involved
20 here.

End TK 28
TK 28A fls

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1 Mr. Berke also says, well, now, it is very easy
2 for the government to first prove the conspiracy and every-
3 body's participation in it and then bring on the activities
4 of Mr. Medlin, or the testimony of Mr. Tippens and others.

5 Well, as your Honor knows and as the Courts have
6 held time and time again and I specifically cite Poliafico
7 vs. United States, 27 Fed 2d 97, Sixth Circuit, 1956, certio-
8 rari denied 353 U. S. 1025. A conspiracy does not spring
9 full blown from the brow of Zeus. It is shown by a collo-
10 cation of the circumstances.

11 And you can't put on a conspiracy by just getting
12 somebody on the stand and saying there is a conspiracy. You
13 put on all acts and statements. And declarations of all the
14 participants and by collocation of the circumstances as
15 stated in Poliafico you establish the conspiracy.

16 Now, with respect, your Honor, to the order of
17 proof in a conspiracy in the invocation of the conspiracy
18 rules or the invocation of the broader opinion of the
19 responsibility of the principal for the acts and declarations
20 of his agent.

21 The leading case on this, your Honor, is United
22 States vs. Manton. We cited this in our brief. I won't
23 give the complete citation but you will note there that two
24 of the judges who ruled in that case later became Justices
25 of the Supreme Court and they said there and I am quoting

1 from Page 844, "Motions made to strike out testimony as to
2 statements made by Fallon in Manton's absence it is urged
3 should have been granted. This evidence was offered and
4 received before it was shown that Manton was a party to the
5 conspiracy. The objection to the testimony going on into
6 the order of proof and so viewed the point falls from want
7 of merit for the rule has been so long established as to be
8 elementary that the order of proof is a matter addressed to
9 the discretion of the trial court."

10 In the Sixth Circuit, your Honor, the first
11 expression of the this was in the old case of Chadwick vs.
12 United States, cited in our brief, in which the point was
13 raised and the Court of Appeals for this circuit therein
14 said and held in response to a claim that a co-conspirator's
15 hearsay declaration has been erroneously admitted that
16 "Facts and circumstances from which a conspiracy is to be
17 inferred may be and often must be shown singularly. This col-
18 location is for the jury and the order on which they may be
19 shown is generally one of the discretion of the trial court."

20 Now, may it please the Court, the defendants
21 cite and apparently rely on Libbelink in this circuit. A cur-
22 sory reading of Nibbelink will show that that case does not
23 at all purport to stand in for a different opinion than the
24 United States vs. Manton and all of the other cases citing
25 Manton. In Nibbelink relied upon by the defendants, a 1933

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case, the holding there was that the statement erroneously

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admitted was made prior to the formation of the conspiracy.

End Tk 28A³Tk 29 fls.⁴

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1 Now, that we have no dispute that a statement
2 made prior to the formation of a conspiracy by a member who
3 later becomes a party to a conspiracy is not admissible
4 against the other co-conspirators. That was the holding in
5 Nibbelink, Your Honor, and it is demonstrable from reading
6 the case but if more proof is needed to show that that is
7 what Nibbelink stands for you can refer back to the Chadwick
8 versus United States, the case I just read. You can also
9 refer to the fact that the case is cited in Nibbelink for
10 that proposition, being Winchester and Partridge Manufacturing
11 Company versus Crary, 116 U. S. 161-166, and Hitchman Coal
12 and Coke Company versus Mitchell, 245 U. S. 229, 249, those
13 Supreme Court cases settled Nibbelink, merely held what we
14 agreed to, that there must be some evidence to establish the
15 conspiracy independent of the statements admissibility of
16 which is unquestioned and does not involve the order of
17 proof.

18 Also, Your Honor, if any further argument is
19 needed that Nibbelink does not stand for this proposition
20 is the case of Schmeller versus United States, 143 Fed. 2d
21 544, Sixth Circuit case 1944. In that case the Government
22 introduced early in the trial a substantial number of
23 exhibits, some of which contained statements which would
24 ordinarily have been hearsay. The District Court permitted
25 the exhibits to be introduced conditionally into evidence

1 over the objection of the defendants as to the order of proof,
2 with the understanding that they cannot apply, cannot be
3 used against the various defendants in their connection with
4 this conspiracy is not established. At the conclusion of
5 the trial the defendants failed to request the charge and
6 none was given. On appeal the Sixth Circuit did not in any
7 manner question the procedures, that is, the order of
8 admission of these things, followed by the District Court,
9 and in allowing the exhibits into evidence subject to later
10 connection, even though the defendants had objected to the
11 order of proof and instead the Court of Appeals held that
12 the only advice in the proceedings was that to which no
13 objection had been made, i. e., the failure to instruct the
14 jury that at the close of all of the evidence that declarations
15 which would otherwise be hearsay ought to be considered
16 against absent defendant only if they were connected with
17 the conspiracy by evidence aliunde or independent evidence.
18 The Court did not question the order of proof in Schmeller.

19 Another indication that Nibbelink does not
20 stand for the proposition cited by the defendants is this
21 explanation in Anthony versus U. S., 256 F 2d Page 509,
22 Ninth Circuit, 1958, I am quoting from Page 55 of that,
23 Your Honor. Here there was, in our opinion, sufficient
24 evidence aliunde, the conversations in question, to show
25 the existence of a joint interprise or consert of action.

1 The evidence offered was connected up by subsequent evidence.
2 This was largely circumstantial evidence, it is true, as was
3 much of the evidence against this appellant, but it was
4 extremely convincing. This is not the case, therefore, where
5 the only evidence of the concert of action was the complained
6 of evidence and enhanced the rule in Nibbelink versus United
7 States, Sixth Circuit, 1933, 66 Fed. 2d 178-179, and
8 comparable cases not applicable.

9 If further authority is needed, Your Honor, for
10 the overwhelming proposition that the order of proof is
11 within the discretion of the trial court we cite the Court to
12 Page 7 of the response we have just filed, footnote one, and
13 therefore we point out Broatelian versus United States, I
14 won't give the citations, I don't want to take too much
15 time, Anthony versus the United States, United States versus
16 Clancy, and others, all standing for the proposition held to
17 be elementary in the Manton case and, by the way, Your Honor,
18 there were five defendants in the Manton case.

19 One other point, Your Honor, that co-counsel
20 reminds me of in the Manton case, in which they held this
21 rule, that the order of proof is elementary, that the order
22 of proof is in the discretion of the trial judge, just as
23 Sutherland and Mr. Justice Stone were especially assigned
24 from the Supreme Court of the United States at that time to
25 sit in the Manton case which, as Your Honor knows, Judge

1 Manton was a circuit judge that was tried in that case for
2 bribery.

3 In this case, Your Honor, as in all matters, you
4 have to proceed in some orderly style. The government
5 proposes to proceed in each of the counts by showing what
6 was done and then showing that the Defendant Hoffa and the
7 other defendants, as the case may be, aided, abetted, produced,
8 procured, counselled and commanded that which was done.

9 The government does not want to take advantage
10 of anyone. If we do not prove that the Defendant Hoffa and
11 the other defendants induced what we show was done then we
12 will agree to a judgment of acquittal.

13 In this case, Your Honor, it's no answer to say
14 the jury must departmentalize these things because the jurors
15 must departmentalize these things, as Your Honor has outlined.
16 At the request of the defendants in their request of examina-
17 tion of the jury, they must departmentalize these things to
18 each and every defendant in each and every count, but we say,
19 Your Honor, that it would be a most serious handicap to
20 require the Government to suddenly put on in one mass its
21 evidence of conspiracy, which cannot be done, as the Court
22 said in Poliafico or to require the government to show someone
23 aided and abetted that is not yet shown to have occurred
24 would not be orderly procedure. This is a case in which the
25 Court or in which the Court should and must exercise

1 discretion undertaking, of course, to protect the rights of
2 all defendants as the court has so clearly done. The Court
3 must exercise its discretion to allow us to put on our proof
4 in an orderly manner and to show what was done and then show
5 the aiding and abetting by the defendants so charged.

6 THE COURT: All right, gentlemen, it's time to
7 take about a ten minute recess.

8 (Thereupon, a recess was had.)

9 (Thereupon, after recess court was in session.)

End
Tk 29

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1 MR. SILETS: Your Honor, may I be heard on this
2 proposition?

3 THE COURT: Yes, just a moment, Mr. Silets, until
4 all counsel are present.

5 Gentlemen, the Court is of the opinion that
6 before any statement of Mr. Medlin, who is not a party to
7 this action, should be received, that there should be some
8 showing in the record of agency or conspiracy that would in
9 some manner involve one or more of the party defendants in
10 the case and that until there is something of that nature,
11 that the proper procedure and proper order would be to pro-
12 ceed.

13 MR. SILETS: Your Honor, you have then obviated
14 the bulk of my argument.

15 But as to all the defendants for all the other
16 defendants, for example, the defendant, Mr. Dorfman, the
17 Court should also consider that each party is named in a
18 separate count and that a concert of action or a conspiracy
19 should be shown by the government as the Court is now
20 directing should be shown in order for it to be admissible
21 against Mr. Dorfman which should be tied into one gigantic
22 conspiracy and as the cases have cited, the links in the
23 chain must be linked together.

24 Now, a point, a case somewhat in point on this,
25 your Honor, and this has not been cited anywhere to date by

1 any of the briefs if I may just call to the Court's attention
2 the case of United States vs. Central Supply Association,
3 6 Federal Rules Decision 526.

4 If I may just briefly fill the Court in with
5 this, there was a trial of 76 defendants represented by 35
6 attorneys. A conspiracy was charged by the United States
7 to restrain trade by a concerted evidence to channelize
8 plumbing supplies in a restrictive system of distribution.

9 As the Court said that is manufacturers to jobbers,
10 jobbers to master plumbers, master plumbers to consumers and
11 installed by union--and then from consumer installed to the
12 union journeymen.

13 The government contended that they all had a
14 common purpose to restrain trade. The defendants contended
15 that the evidence showed if at all conspiratorial conduct
16 among members of each stratum of the industry or among
17 members of only two strata of the industry and there was
18 no concert between the manufacturer and the unions or between
19 manufacturers and the master plumbers or between jobbers and
20 the unions.

21 The defendants contended that if the evidence
22 revealed that a cooperative effort between the jobbers and
23 the manufacturers on one hand, and jobbers and master plumbers
24 on the other hand, and contracts between the master plumbers
25 and the local unions, still that activity fell far short of

1 an overall conspiracy.

2 In effect, what the Court said was if I can draw
3 the analogy here, that we have separate counts and when the
4 government has to prove before this hearsay evidence goes in
5 a concert of action, they have to go one step further than
6 showing a concert in each separate count but in order to tie
7 the concert of action that they may establish, for example,
8 with Medlin, to Dorfman, they must show that the ends of the
9 chain have all been linked together and so the effort on the
10 part of the government to show a concert of action if it is
11 to be admissible against anybody in this case must be a huge
12 link, linking everybody in and it is not enough to say
13 separate concerts of action.

14 Now, this count here of Medlin, the testimony
15 so far, there has been nothing shown which would link up
16 Mr. Dorfman.

17 And I say this that the Court when the government
18 gets ready to prove the concert of action in order for it to
19 be admissible against Dorfman they must show the entire con-
20 cert and not a segment.

21 THE COURT: All right. Yes, sir.

22 MR. NEAL: May it please the Court, if your Honor
23 thinks in his wisdom it best that we proceed in the manner
24 you have indicated, the government is ready to proceed.

25 THE COURT: All right.

1 MR. NEAL: Your Honor, this will mean we will
2 proceed with Count No. 3. We ask that the Court make some
3 explanation to the jury. I hate to leave the jury in the
4 impression that we as they are now, that we are proceeding
5 with Count No. 2, with the Witness Tippens who came in, who
6 is named in the indictment, suddenly he doesn't appear and
7 we take a new attack. We will call next as our witness one
8 James T. Walker. He will relate to Count 3 of the indictment.

9 MR. SCHIFFER: Your Honor, I have made a request,
10 if Mr. Neal has completed with his statement, I have made a
11 request of Mr. Hooker that Mrs. Carlton be recalled for one
12 or two questions, and we will be completed with her and she
13 can return to Nashville because we had held her here subject
14 to recall.

15 We would like to put these two or three questions
16 to her and complete that phase of the testimony.

17 MR. NEAL: Your Honor, we have no objection of
18 that if it be understood that we not setting a precedent that
19 we are going to agree to that all at the same time, in this
20 particular instance, we don't object to them doing that. I
21 do request that the Court make some explanation to the jury.

22 THE COURT: All right, are we ready, gentlemen,
23 to have the jury come back?

24 MR. SILETS: One moment, your Honor.

25 THE COURT: And does the Court understand then

1 that you desire to have the witness, Mrs. Carlton, returned
2 to the stand, Mr. Schiffer?

3 MR. SCHIFFER: Your Honor, we will withdraw the
4 request and proceed.

5 THE COURT: All right. Have the jury returned.

6 MR. SCHIFFER: Subject to recall her, reserving
7 our right to recall her at a later time.

8 THE COURT: All right.

9 (Thereupon, the jury of 12 and 4 alternates were
10 brought into open and the following proceedings were had,
11 to-wit:)

12 E. J. Tk 30
13 Tk 31 fls.

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1 THE COURT: As time goes on, it's reasonable to
2 assume that the interruptions in the trial, necessary inter-
3 ruptions in the trial, will be shorter. It does take time.
4 You will just have to bear with us and recognize that we are
5 all very conscious of the fact that you ladies and gentlemen
6 are waiting, but we are moving with the case as rapidly as
7 we can.

8 It will not always be possible in this case,
9 ladies and gentlemen, to proceed in a completely sequential
10 manner. It may be necessary from time to time for witnesses
11 to be introduced in some order other than in a sequential
12 order and I just call that to your attention as that may
13 arise, but you will bear in mind all of the witnesses, and
14 as may be appropriate later, relate the witnesses' testimony
15 in the proper sequence.

16 All right, gentlemen.

17 MR. HOOKER: James T. Walker.

18 MR. SAULPAW: Raise your right hand. Do you
19 solemnly swear that the evidence you give in this case will
20 be the truth, the whole truth, and nothing but the truth,
21 so help you God?

22 MR. WALKER: I do.

23 MR. SAULPAW: Have a seat.

24 JAMES T. WALKER,

25 a witness called at the instance of the United States of

1 America, being first duly sworn, was examined and testified
2 as follows:

3 DIRECT EXAMINATION

4 BY MR. HOOKER:

5 Q Is this James T. Walker?

6 A Yes, sir.

7 Q Where do you reside?

8 A 1904 Meharry Boulevard, Nashville, Tennessee.

9 Q Have you been living at that address for some
10 considerable length of time?

11 A I have.

12 Q Did you know a man by the name of Gratin Fields
13 that was on the jury in the case at Nashville against Mr.
14 Hoffa?

15 A Yes, I know Mr. Fields.

16 Q Does he live somewhere in your neighborhood?

17 A Yes, sir, about three doors from me.

18 Q About three doors from you?

19 A Yes, sir.

20 Q What is your present employment?

21 A Metropolitan Police Department, Nashville,
22 Tennessee.

23 Q How long have you been on the police force?

24 A Approximately four years.

25 Q You are generally known by people who know you

1 well as Jack, are you not?

2 A Yes, sir.

3 Q Now, do you know the defendant Thomas Parks?

4 A I do.

5 Q How long have you known him?

6 A About five or six years.

7 Q Can you identify him here in the courtroom today?

8 MR. BRANSTETTER: Let's counsel quit pointing

9 if he wants him to --

10 MR. HOOKER: (Interposing) I want to show he is
11 not sitting at the counsel table where he belongs.

12 MR. BRANSTETTER: We don't have room at counsel
13 table.

14 MR. HOOKER: Give him somewhere where we can see
15 him, it won't be necessary for us to point to him.

16 A Yes, I see Mr. Parks.

17 Q Is that the man you know?

18 A Yes, sir.

19 Q How long have you known him?

20 A Approximately six years.

21 Q Now, did you have any occasion to see him at any
22 time during the Hoffa trial?

23 A Yes, sir.

24 Q Just state to the jury about how long that was
25 after the Hoffa trial commenced?

- 1 A Shortly, very shortly afterwards.
- 2 Q And where did you see the defendant Thomas Parks?
- 3 A The defendant called me and came to my home.
- 4 Q He telephoned you?
- 5 A Yes, sir.
- 6 Q And about what time did he come to your house?
- 7 A Approximately six, between five and six in the
- 8 afternoon.
- 9 Q How did he arrive at your house?
- 10 A In his personal automobile.
- 11 Q Do you know what kind of an automobile that was?
- 12 A A two-toned green Buick.
- 13 Q Do you know about what year model it was?
- 14 A About a '56, I imagine.
- 15 Q About a 1956 model?
- 16 A Yes, sir.
- 17 MR. HOOKER: Does counsel care to see these
- 18 pictures of the '56 model? It's not offered as being a
- 19 picture of the automobile, but of the same type automobile,
- 20 a 1956 two-toned Buick.
- 21 Q I hand you here two photographs of plates, two
- 22 different views of a 1956 Buick sedan automobile, and get
- 23 you to look at those and state if they are similar, not the
- 24 same car but similar to the car that was being driven by the
- 25 Defendant Parks on the night you met him?

1 A This looks like the car.

2 MR. HOOKER: May it please your Honor, we'd like
3 to offer those two photographs collectively as Government
4 Exhibit No. --

5 THE COURT: Three.

6 MR. SCHIFFER: They are offered for the type of
7 car but not the car.

8 MR. HOOKER: Not the car but similar to the same
9 type of automobile that he was driving.

10 MR. SILETS: If your Honor please, my understanding
11 is that this is not to be admitted in evidence against Mr.
12 Dorfman, is that correct?

13 MR. HOOKER: We are offering it --

14 THE COURT: (Interposing) This testimony is
15 offered in connection with the charge made in the third count
16 of the indictment.

17 MR. HOOKER: That is right, yes.

18 THE COURT: Is that correct?

19 MR. HOOKER: Yes, that is correct.

20 (The photographs referred to above were marked
21 Government's Exhibit No. 3, Witness James T.
Walker, and received in evidence.)

22 THE COURT: Well, so far the Court is not in
23 position to rule on that matter.

24 BY MR. HOOKER:

25 Q Now, when the Defendant Parks reached your house

1 there did you see him and talk with him?

2 A Yes, sir.

3 Q Where did the conversation take place?

4 A In his car.

5 Q You went out in front and got in the car?

6 A Yes, sir.

7 Q Well, just tell us now, Jack, what he said to you
8 and what you said to him?

9 MR. SILETS: Your Honor, I am going to object on
10 behalf of Mr. Dorfman since he was not present at the time of
11 this conversation and ask the Court to instruct the jury to
12 disregard this testimony as to Mr. Dorfman.

13 THE COURT: All right.

14 MR. BROWN: Your Honor, I'd like to enter the same
15 objection as to Mr. King. He's not named in the third count
16 of this indictment.

17 MR. HAGGERTY: I object to it on behalf of Mr.
18 Hoffa, it's hearsay testimony and if your Honor overrules me
19 then I ask for an instruction to the effect that it has no
20 application or probative force or value with reference to the
21 Defendant Hoffa.

22 MR. BRANSTETTER: And may it please the Court, I
23 offer the same objection on behalf of Larry Campbell and
24 although he is named in that particular count of the indict-
25 ment, because there is no testimony to this point showing that

1 Larry Campbell was present or knew anything about this
2 particular man and as to him it would constitute hearsay.

3 MR. ALEXANDER: We object for the Defendant Tweel
4 upon the ground as stated by Mr. Silets.

5 THE COURT: Ladies and gentlemen, during the
6 course of the questioning the jury on the voir dire examination
7 I stated to you that the occasion might arise during the
8 course of the trial for the Court to instruct you to consider
9 evidence against some but less than all of the defendants.
10 I even further instructed you that you would try the case of
11 each defendant separate and apart from each other defendant.

12 The occasion has now arisen for the Court to
13 instruct you to do just that. The attorneys for the government
14 propose to question this gentleman as to certain statements
15 alleged to have been made to him by the defendant Thomas
16 Ewing Parks. The testimony of the witness as to those state-
17 ments will be hearsay as to the defendants other than Mr.
18 Parks and ordinarily would not be admissible.

19 We have a general rule of law that hearsay
20 testimony is ordinarily not admissible in court, that is, a
21 statement by a witness on the stand as to what someone out-
22 side of the court may have said, and there is good reason as
23 to why there should be such a rule of law because it's general-
24 ly proper and desirable and more reliable in a case if every-
25 one comes in and gives his own statement or testifies as to

1 matters upon which he or she can be examined and can be
2 cross-examined rather than having some witness on the stand
3 telling what someone else said outside of the courtroom.

4 So, for that reason, we have a general rule of
5 the law of evidence that hearsay statements ordinarily are
6 not admissible in testimony. There are a number of exceptions
7 to that rule wherein hearsay testimony is admissible, wherein
8 one witness is permitted to testify what some third party or
9 a defendant, as the case may be, may have said outside of the
10 courtroom.

11 Under a standard exception to the hearsay rule,
12 the testimony as to the statements of a party, one of the
13 parties, may be admissible as to that party or that defendant
14 if said statement constituted admissions or declarations
15 against his own interests.

TK 31 End

TK 32 fls

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1 Another standard exception here to the hearsay
2 rule is to the admissions or declarations against interests
3 by one party and when they may be admissible even as to another
4 party provided that there is other evidence in the case that
5 shows that one, that the party making the out-of-court
6 statement was a co-conspirator with the other parties or with
7 some of them.

8 And second, provided that it appears from other
9 evidence that the statements were made in the furtherance of
10 a conspiracy with other parties and while the conspiracy was
11 in existence.

12 Now, the theory underlying this exception to the
13 hearsay rule is that statements of a co-conspirator made in
14 the furtherance of the conspiracy and while a conspiracy is
15 in effect are in effect the statements of a co-conspirator
16 and if against the interests of such co-conspirator based
17 then place them on the same footing as admissions or declara-
18 tions against the co-conspirators' own interests.

19 In other words, the general idea of principal
20 and agent is somewhat related to this. That is, that if the
21 relationship of principal and agent is shown and the agent
22 make statements within the authority of the agency, those
23 statements can be admitted not only as to the agent but they
24 can be admitted as to the principal.

25 Likewise, it is that statements of a conspirator

1 made out of court can be admitted even though hearsay as to
2 a co-conspirator provided as the Court has pointed out to you
3 that from other evidence it is shown that the party making the
4 statement was a co-conspirator and that the statements were
5 made in furtherance of the conspiracy and during the time the
6 conspiracy was in existence.

7 Now, to justify offering this evidence at this
8 time, the government will be required at some stage in the
9 proceedings of this case by order of proof to establish that
10 the defendant Thomas Ewing Parks was a co-conspirator with
11 one or more of the other defendants. And that the statements
12 in question were made in furtherance of that conspiracy.

13 The Court will, therefore, permit the testimony
14 at this time both as to Mr. Parks and as to any other party
15 defendant whom it shall be established or if it shall be
16 established was a party to a conspiracy with Mr. Parks and
17 at the time the statement was made.

18 I would caution you, however, that you will con-
19 sider this testimony of any statement made by Mr. Parks only
20 as to Mr. Parks until and unless you are satisfied by other
21 evidence in the case that at the time of making of these
22 alleged statements the defendant Thomas Ewing Parks was a co-
23 conspirator of one or more other defendants in which event
24 you may then consider such evidence against any other
25 defendant shown by such other evidence to have been a co-

1 conspirator of the defendant Thomas Ewing Parks.

2 Now, in order that you may understand this
3 instruction properly, it is also proper that I should instruct
4 you with regard to conspiracy and what a conspiracy is, what
5 we are talking about when we talk about a conspiracy.

6 A conspiracy is simply an agreement between two
7 or more persons to do an unlawful thing or, to do a lawful
8 thing by unlawful means. The agreement to pursue an unlawful
9 purpose is essential to the existence of a conspiracy but
10 the agreement need not be express or in so many words. It may
11 be implied. Or tacitly understood between the conspirators
12 and it may be proved by circumstantial evidence or by the
13 proving of other facts from which the existence of a conspiracy
14 may reasonably be inferred.

15 It is not essential to the existence of a
16 conspiracy that the agreement between the conspirators be
17 formally made between the parties at any one time. If, for
18 example, two persons agree to pursue an unlawful purpose and
19 then a third person subsequently with the knowledge of the
20 existence of the conspiracy joins in and assents to the
21 conspiracy either impliedly or expressly then all three persons
22 are conspirators in the same conspiracy, and the same instruc-
23 tions would apply to any number of alleged co-conspirators.

24 It is not necessary that all of the conspirators
25 ever meet together. All that is required is that each party

1 know of the existence of the conspiracy. And that each agree
2 to assist in some manner in the furtherance of the unlawful
3 purpose.

4 Thus, a conspiracy is in the nature of a partner-
5 ship to violate the law and each conspirator is regarded as
6 the agent of his co-conspirators when a conspiracy is
7 established.

8 It is for this reason that the statements of one
9 conspirator made in furtherance of a conspiracy are admissible
10 and may be considered as evidence against his co-conspirator
11 or co-conspirators, as the case may be, provided as I have
12 indicated to you that the conspiracy itself is established
13 by evidence other than a statement of the alleged co-conspira-
14 tor and provided that the statement of the co-conspirator
15 in this case, Mr. Parks, is the party whose statement is
16 purported to be introduced, provided that the statement is
17 made at a time when the conspiracy was in effect, if you
18 should find that there was a conspiracy and if you should
19 find that a conspiracy was in effect.

TK 32 End
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1 MR. BRANSTETTER: May it please the Court, on
2 behalf of the Defendant Campbell we would like to note an
3 exception to the definition of conspiracy given at this time
4 and we would also like to make other motions possibly outside
5 the presence of the jury.

6 THE COURT: At this time, do you desire to make
7 those at this time?

8 MR. BRANSTETTER: Yes, sir. They will be very
9 short. We, of course, apologize for any unnecessary movement.

10 MR. HOOKER: If Your Honor please, we, of course,
11 offer this proof as to the Defendant Parks and expect to
12 connect it with the defendants Hoffa and Campbell later on
13 as co-conspirators or agents or principals but for the moment
14 we offer it--

15 MR. BRANSTETTER: May it please the Court, we move
16 for a mis-trial at this point. That is what I wanted to make
17 the motion on and counsel for the government now is going
18 into detail on matters that I had thought would not be
19 discussed in this regard.

20 THE COURT: Just a minute, ladies and gentlemen,
21 if you will, please step out.

22 (Thereupon, the jury of 12 and four alternates
23 were excluded from the courtroom and the following proceedings
24 were had to-wit:)

25 THE COURT: All right.

1 MR. HOOKER: Does Your Honor prefer for the
2 witness to remain?

3 THE COURT: I see no reason why he should not
4 remain unless the parties have some objection.

5 MR. SCHIFFER: Your Honor, the substance what we
6 will have to relate to the court will deal with this witness'
7 testimony and we thought it might be more apropos.

8 THE COURT: All right, he will be excused.

9 (Thereupon, the witness was excluded from the
10 courtroom and the following proceedings were had to-wit:)

11 MR. BRANSTETTER: May it please the Court, I
12 will make every effort throughout to try and refrain from
13 requesting the jury to retire unless I feel as attorney
14 representing a client, feel that it is appropriate and
15 proper. I made the request because I felt that the
16 dissertation, may it please the Court, on the law of
17 conspiracy under the testimony and the limited testimony that
18 had been given by this particular witness probably exceeded
19 that which would be fair in front of the jury and fair to the
20 other defendants. And it was on this basis that I asked the
21 jury to leave and I now make a motion for a mis-trial on that
22 basis.

23 The fact that no conspiracy has been charged at
24 this time, that no conspiracy has been established at this
25 time, is of sufficient import it seems to me, may it please

1 the Court, to warrant such a motion and the granting of such
2 a motion for a mistrial.

3 THE COURT: Defendants desire to have that motion
4 stand as to each party defendant other than Mr. Parks?

5 MR. BROWN: Yes, sir.

6 MR. HAGGERTY: I wish to join in that also.

7 THE COURT: I say each party defendant other than
8 Mr. Parks?

9 MR. SCHIFFER: I make it on behalf of Mr. Parks as
10 well and I will add to the grounds.

11 THE COURT: All right, Mr. Silets.

12 MR. SILETS: Your Honor, I make my motion in the
13 alternative I think for a mistrial on mistrial and severance.
14 Mr. Hooker has admitted to the court in front of the jury
15 that the most that this testimony would show and the most
16 he seeks to prove is ultimately a conspiracy between Mr.
17 Parks, Mr. Campbell and Mr. Hoffa.

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1 To admit this evidence in and let the jury hear
2 this no cautionary instruction could satisfy the removal of
3 the prejudice to this jury to hear that when the government
4 admits by its own statement that it does not seek to prove
5 to tie in Mr. Dorfman.

6 Now, I move then either for a mistrial and the
7 granting of a severance and a separate trial because there
8 is no possible way that this prejudicial testimony which
9 the government says will not be used to prove--to be admitted
10 against Dorfman can be removed from their mind.

11 THE COURT: All right.

12 MR. BROWN: Your Honor, on behalf of the Defendant
13 King, since we occupy the same position, we adopt the motion
14 made by Mr. Silets.

15 MR. ALEXANDER: That's been our position all
16 along and we also adopt that.

17 MR. SCHIFFER: On behalf of the Defendant Parks
18 we adopt the same position but we go one step further. The
19 government is attempting to do here in Count 3 what the
20 Court prohibited it to do in relationship to Count 2.

21 Now, they have not established first the con-
22 spiracy. They are about to introduce evidence now and
23 actually introducing it of some statement of an alleged
24 co-conspirator before they show the conspiracy itself and
25 I believe this is so highly prejudicial that once the jury

1 hears what this witness has to say then, your Honor, there
2 is hopeless prejudice and any instruction from the Court
3 could never eliminate from the consciousness and the memories
4 of this jury what they might be told and would be forced to
5 be told by the Court as a matter of law just to wipe out of
6 their mind.

7 THE COURT: All right.

8 MR. SCHIFFER: I believe the government should
9 be forced now by direction of the Court to do precisely in
10 this count what they have been told to do in the prior count
11 and that is prove the conspiracy before statements of a co-
12 conspirator.

13 THE COURT: All right. Allow each motion for a
14 mistrial to be overruled and the motion for severance to be
15 overruled.

16 May we proceed now, gentlemen?

17 MR. NEAL: Your Honor, we do have one point.
18 Your Honor covered the rules with respect to co-conspiracy
19 very well. The government thinks but that also statements
20 made by this Defendant Parks to this Jack Walker would be
21 admissible against the Defendant Hoffa and the Defendant
22 Campbell on the basis of principal and agency, that is, if
23 the Defendant Hoffa and the Defendant Campbell were not only
24 co-conspirators but they were agents or principals or induced
25 Parks to make these statements, then it's against both

1 principal and agent theory. I wasn't sure the Court com-
2 pletely covered that aspect of the law.

3 MR. HAGGERTY: Well, we run right into the pro-
4 position again of proving the conspiracy first.

5 THE COURT: Well, if it necessary or appropriate
6 to give further instructions as we proceed from time to time
7 about agency we will do so.

8 MR. SILETS: Your Honor, is the Court going to
9 instruct the jury now to disregard this against Mr. Dorfman?

10 THE COURT: The Court has given what it believes
11 to be the proper and appropriate instruction as to each party
12 defendant and would not propose to instruct further at this
13 time.

14 MR. SILETS: The Court will not give a cautionary
15 instruction as to Dorfman, is that it?

16 THE COURT: I have given the instruction,
17 cautionary instruction, I feel, Mr. Silets, that should be
18 given.

19 MR. SILETS: Then I would like to interpose my
20 objection and take an exception to it.

21 THE COURT: All right. May we have the witness
22 return and also have the jury return?

23 (Thereupon, the jury of 12 and 4 alternates were
24 brought into open court and the following proceedings were
25 had, to-wit:)

1

JACK WALKER,

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having been previously duly sworn, was recalled and testified further as follows:

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MR. HOOKER: May it please your Honor, we would like the jury to see the photographs of the car, Government's Exhibit No. 3, if they could be passed. They have been admitted in evidence, as I understand it.

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THE COURT: All right. Proceed with your examination.

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DIRECT EXAMINATION

11

BY MR. HOOKER:

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Q I think I just asked you where, if you had a conversation with the Defendant Parks that night and where.

13

14

A Mr. Parks' car.

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Q In the car. All right. I want you to tell these ladies and gentlemen of the jury what the Defendant Parks said to you and what you said to him on that occasion.

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A Mr. Parks came to my home. I went out and sat out in the car with him. He asked me if I knew anything in regards to the Hoffa case.

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I told him nothing other than what I had read in the papers and he also asked me if I knew Mr. Fields that lived up the street from me.

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I told him that I did.

25

He went to explain to me that the jury, I mean

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Walker - Direct

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1 the government, was angry with Mr. Hoffa, wanted to convict
2 him. He asked if Mr. Fields needed money, if he was in debt
3 or what type of person he was.

4 So I told him I did not know, I did not know that
5 much about Mr. Fields, and that I was a law enforcement
6 officer and didn't want any part of that type of thing.

End Tk 33
Tk 33A fls.

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1 Q What Mr. Fields was he talking about, do you know?

2 A Mr. Gratin Fields.

3 Q Is he the one that was on the jury?

4 A Yes, sir.

5 Q All right. When did you next--, now, in this
6 conversation in the car there, did Parks make any remark
7 about who wanted to talk to you?

8 MR. SCHIFFER: Objected to, Your Honor, this is
9 an entirely leading question, highly improper.

10 THE COURT: Sustain the objection.

11 BY MR. HOOKER:

12 Q State whether or not there was any statement
13 made there that night about talking to anybody else.

14 MR. SCHIFFER: Object to, Your Honor, another
15 leading question. The proper question.

16 BY MR. HOOKER:

17 Q Was there any further conversation and what was it?

18 MR. HOOKER: I want to direct his attention, if
19 Your Honor please.

20 THE COURT: Re-state your question, Mr. Hooker.

21 BY MR. HOOKER:

22 Q State whether or not there was a statement made
23 about anyone else talking to Mr. Fields.

24 MR. SCHIFFER: Object to that question, Your
25 Honor, I think it's highly improper and leading.

1 THE COURT: Overruled. Overrule that objection.

2 A Mr. Fields verified the fact that the big boys--

3 MR. SCHIFFER: (Interposing) Object to it. I
4 don't believe Mr. Fields has been placed on the scene.

5 A Mr. Parks verified the fact that the big boys,
6 he did not call the name.

7 MR. SCHIFFER: Object on the ground it calls for
8 a conclusion.

9 BY MR. HOOKER:

10 Q Big boys wanted to talk to Fields?

11 MR. SCHIFFER: Objected to, Your Honor, and I
12 should like to ask Your Honor's indulgence to advise Mr.
13 Hooker, who is a very able lawyer, that when an objection is
14 made he knows he shouldn't continue.

15 THE COURT: Yes, however, this was the witness,
16 the witness did not understand. Whenever an objection is
17 made let the Court have an opportunity to rule.

18 MR. HOOKER: They have been objecting to every
19 question.

20 MR. SCHIFFER: Whenever I feel it's improper I
21 am going to object. I ask the jury be instructed that that
22 remark of Mr. Hooker is unfair.

23 THE COURT: You will disregard that remark, ladies
24 and gentlemen, the attorneys have a right and obligation to
25 their clients to make an objection which they think are

1 proper and appropriate. All right. Will you state your
2 objection, Mr. Schiffer, and the Court will rule upon it.

3 MR. SCHIFFER: The question as put calls for a
4 conclusion.

5 THE COURT: Overrule the objection.

6 BY MR. HOOKER:

7 Q All right. In this same conversation that night
8 in the automobile, state whether or not there was anything
9 said about hanging the jury.

10 MR. SCHIFFER: Objected to, Your Honor, we are
11 coming back to the same question.

12 THE COURT: Sustain the objection.

13 BY MR. HOOKER:

14 Q Do you recall anything else that was said in
15 this conversation?

16 MR. SCHIFFER: Objected to, Your Honor, the form
17 of it thus far we have only been told about one conversation.
18 Now Mr. Hooker is injecting the first, there has been no
19 foundation laid as to any more than one conversation.

20 THE COURT: Overrule the objection. Can we have
21 the reporter read the question back? The Court ruled on an
22 objection as the witness was starting to respond.

23 THE REPORTER: "Question: State whether or not
24 there was any statement made about anyone else talking to
25 Mr. Fields?"

1 THE COURT: The witness had started to respond
2 when he was interrupted by the objection and the objection is
3 overruled and the witness may respond to that question, if
4 he has a response.

5 A He referred to the big boys, no name, he referred
6 to the big boys wanted to talk to him.

7 MR. SCHIFFER: Request the answer be stricken,
8 highly speculative.

9 THE COURT: Overruled.
10 BY MR. HOOKER:

11 Q Wanted to talk to whom?

12 A Mr. Fields.

13 Q A man on the jury?

14 A Yes, sir.

15 Q Now, do you recall anything else that was said in
16 the conversation in the car?

17 A He stated that they needed one other to hang the
18 jury or for a mistrial.

19 Q I didn't quite catch that. Needed another one?

20 A One other person on the jury to hang the jury.

21 Q All right. Now, when was the next time that you
22 heard anything from the Defendant Parks, if you did?

23 A He called two or three days later and asked if I
24 had done anything toward our conversation and I told him no.

25 Q Did he say anything further?

- 1 A Not at this time.
- 2 Q Was that a telephone conversation?
- 3 A It was.
- 4 Q Did you recognize the voice?
- 5 A I did.
- 6 Q And whose voice was it?
- 7 A Thomas Parks.
- 8 Q That is the man you pointed out here earlier?
- 9 A That's right.
- 10 Q When did you see him any more after that?
- 11 A He came to my office a day or two later and was
- 12 discussing his new business, that he needed some printing done
- 13 for his business.
- 14 Q Well, now, you stated that he came to your office
- 15 later. Do you, in addition to being a member of the
- 16 Metropolitan Police force have another business there in
- 17 Nashville?
- 18 A I did have at that time.
- 19 Q You did have. I mean at that time.
- 20 A Yes.
- 21 Q What was the nature of the business?
- 22 A Secretarial service.
- 23 Q Secretarial service?
- 24 A Yes, sir.
- 25 Q And where was your office?

1 A 1703 23rd Avenue North, Nashville.

2 Q And that is where he came to?

3 A That is.

4 Q Did you have a conversation with him there?

5 A I did.

6 Q Well, just state to these ladies and gentlemen
7 of the jury what he said.

8 A He was telling me about his opening a dry cleaners
9 and he needed someone to work for him and some printing, some
10 hand bills printed for his dry cleaners and two or three
11 days prior to that I talked to Mrs. Jackson that lives a door
12 or so from me and she was telling me that her son--

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Pk 33a

Pk 34
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1 MR. HAGGERTY: I object on behalf of Mrs.
2 Jackson.

3 MR. HOOKER: We don't insist on that.

4 THE COURT: Sustained.

5 Q (By Mr. Hooker) Go ahead, what else did he say,
6 don't tell what anybody else told you unless you repeated this
7 to the Defendant Parks.

8 A I told him that I had heard that a Walter Jackson
9 and a Carl Fields was in need of employment. And he asked if
10 Carl Fields was the son of the Fields that was on the jury.
11 I told him yes. He said, "Well, that is my man." And would
12 I contact him. So I called Mrs. Fields' residence, his
13 mother, Carl Fields' mother and asked her if Carl was
14 employed. She told me that he had a job but it wasn't the
15 type job she would like for him to have and where he was
16 working. Gave me the phone number and I called him, telling
17 him that there was someone there would like to give him a job
18 and asked him could he come out to my residence. He came
19 out that afternoon. And I introduced him to Mr. Parks and
20 was called back in the back of the room for something, I have
21 forgotten now, something, when I came back, Fields and Parks
22 had undoubtedly finished their conversation and told me they
23 would see me later.

24 Q Well, was the Defendant Parks present when you
25 called Carl Fields' mother and made arrangements to see him?

1 A Yes.

2 Q And then was he present when you met him at your
3 residence that night?

4 A He came after Carl Fields came to my residence.

5 Q He came afterward?

6 A Yes, sir.

7 Q Carl Fields was already there?

8 A Yes, sir.

9 Q And how did he arrive at your house?

10 A Same automobile.

11 Q Driving in this same Buick car, the type that the
12 picture has been shown to the jury?

13 A Yes, sir.

14 Q Now, what happened next after that?

15 A Well, both of them left. I didn't see either one
16 of them until, oh, later that afternoon, that same evening.
17 Carl came to my office. We were having a meeting. He sat
18 in the front part of the office and a few minutes later Mr.
19 Parks came by and they went across the street from my place
20 there and sat in a car and talked.

21 Q Then, did you have any further conversation that
22 night with the Defendant Parks?

23 A That night he called me asking if I had heard from
24 Carl Fields and I told him I had not. He asked me to call
25 him and see what he was going to do. I called Carl Fields and

1 told him that I had talked with Parks and wanted to know what
2 he was going to do. Carl told me that he hadn't done any-
3 thing. That he was afraid to talk to his father and would
4 not talk to him. I called Fields back.

5 MR. SCHIFFER: Would you have him to speak louder,
6 your Honor? It doesn't carry back this way.

7 THE COURT: Speak loudly so everyone can hear you.

8 THE WITNESS: I called Fields back telling him the
9 conversation between -- I called Parks back, called Parks
10 back.

11 MR. SCHIFFER: Objected to as being pure hearsay.

12 THE COURT: Overrule the objection.

13 MR. HOOKER: No, talking about the Defendant
14 Parks.

15 MR. SCHIFFER: He said Fields.

16 THE WITNESS: I called Parks back telling him
17 what Carl Fields had said and he said that he had to do some-
18 thing about eleven o'clock.

19 Q (By Mr. Hooker) State whether or not there was
20 anything said in that conversation --

21 MR. SCHIFFER: Same objection, your Honor.

22 MR. HOOKER: Let me finish about what anybody was
23 going to wear?

24 MR. SCHIFFER: Objected to, your Honor, as being
25 entirely leading. If there was a conversation, let the

1 witness testify. If Mr. Hooker wants to testify, let him
2 take an oath and take the witness stand.

3 THE COURT: Overrule the objection.

4 THE WITNESS: Carl told me that Mr. Parks wanted
5 to know what his father was going to wear. And that is all
6 he wanted to know, just what he was going to wear, if he
7 could tell him that.

8 MR. BERKE: Just a moment, does your Honor under-
9 stand that this is a conversation between Carl Fields and
10 this witness?

11 MR. HOOKER: I withdraw that. That is not what
12 I asked for, if your Honor please.

13 MR. BERKE: I know, but he is stating it, your
14 Honor.

15 THE COURT: You will disregard any testimony --

16 MR. BERKE: (Interposing) Even though Mr.
17 Schiffer didn't object, I object to it.

18 THE COURT: You will disregard any statements as
19 to what someone else may have said other than Mr. Parks or
20 what this -- you may consider what this witness said to Mr.
21 Parks and what Mr. Parks said to this witness but not other
22 statements.

23 MR. BRANSTETTER: May it please the Court, we are
24 having some little trouble in hearing. It may be due to the
25 acoustics. Or it may be due to the enunciation, I'm not sure,

1 but I do not understand at all times the words being used by
2 the witness.

3 THE COURT: All right, he understands that he is
4 to speak up and keep the courtroom as quiet as possible and
5 it will be helpful, too.

6 Q (By Mr. Hooker) State whether or not the
7 Defendant Parks stated or said anything about what anybody
8 was going to wear?

9 A Mr. Parks wanted to know of Carl as to what either

10 MR. HAGGERTY: I object to what he wanted to
11 know as calling for a conclusion and suggestion now at this
12 time the language employed by Mr. Parks at that time should
13 attempt to be as close as possible.

14 THE COURT: Sustain that objection.

15 Q (By Mr. Hooker) State just as near as you can
16 what was said about that by Parks.

17 A Wanted to know what Mr. Fields was going to wear,
18 the type of necktie. And that was what he wanted Carl Fields
19 to find out for him.

20 MR. HAGGERTY: I object to that, may it please
21 the Court, this is no attempt to use the language, attempt to
22 use the language that was employed, allegedly employed by
23 Parks at that time. This is just his recollection that he
24 puts in his own language.

25 THE COURT: I believe that is a matter you may

1 cross examine on. Overrule your objection.

2 Q (By Mr. Hooker) Is that the substance of what
3 he said?

4 A That is the substance.

5 MR. SCHIFFER: May we ask who said this, if your
6 Honor please?

7 MR. HOOKER: Parks.

8 MR. SCHIFFER: Parks or Carl Fields? I under-
9 stood the witness to say Carl Fields.

10 Q (By Mr. Hooker) State whether or not Parks made
11 any statement about anyone accepting any money.

12 MR. SCHIFFER: Objected to, your Honor.

13 MR. BRANSTETTER: Now, may it please the Court,
14 Defendant Campbell is named in this count, I think there has
15 been no testimony nor will there be any about him, but in
16 the event that they state what was stated while the jury was
17 here before that they might tie something up, I want to
18 object to counsel leading this witness and state whether or
19 not so and so was done, counsel knows that this is not proper.
20 It is leading and suggestive. It is unfair, and it is unfair
21 to these defendants.

22 THE COURT: Objection sustained.

23 Q (By Mr. Hooker) Do you recall anything else
24 that was said in this conversation?

25 A He said that he had given Carl Fields some money.

1 That he thinks he would come through.

2 Q Now, did you meet him any more after that?

3 A Yes.

4 Q Where did you meet him the next time?

5 A He came back to my office a day or so later and
6 asking again if I had heard from Carl. I told him I had not.
7 He wanted to know who was actually boss of the Fields family.
8 And was it Carl.

9 MR. SCHIFFER: I just couldn't distinguish the
10 words, your Honor. May we have them repeated?

TK 34 End
34A fls

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1 THE COURT: Will you repeat that on the under-
2 standing?

3 THE WITNESS: He came back a day or so later and
4 asked me if I knew who the boss of the Fields family was, and
5 was it Carl. I told him I didn't think so and probably his
6 sister. He asked what was her name and I told him Mattie.
7 And asked if I knew her. I said, "Yes." And asked me to
8 contact Mattie. I called Mattie on her job. She worked for
9 the Housing Authority there in Nashville. And I asked did
10 she remember me. She did. I asked her if she would, what
11 time she went to lunch. She told me about twelve o'clock.
12 I asked her could I come out. Parks and I went to her place.

13 MR. BRANSTETTER: May it please the Court, I
14 can't understand how some person named Mattie that he is
15 repeating offering her to the Court and jury has any relation-
16 ship to the proceedings and, secondly, it would be purely
17 hearsay. I don't know who this person Mattie is.

18 THE COURT: Overrule the objection.

19 Q (By Mr. Hooker) Who is Mattie?

20 A Mattie is Carl Fields' sister. Mattie Leaf.

21 Q Go ahead, where did you go then?

22 A I went out to the Housing Authority, J. C. Napier
23 Courts and met Mattie. I went in. Parks carried me out
24 there.

25 MR. SCHIFFER: Pardon me, what was that last

34A - 2 .

Walker - Direct

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remark? Parks what?

THE COURT: Parks carried me out there?

THE WITNESS: That's correct.

End Tk 34A⁴
Tk 35 fls.

1 Q All right. What took place?

2 A We went in and talked to Mattie, asking her if
3 her brother had discussed the matter with her. She said yes
4 he had, "But I don't want any part of the government or any-
5 thing of that particular type."

6 I told her that knowing her as I did I was glad
7 that she didn't and if they disturbed her any longer to call
8 the FBI or the police.

9 Q Was Parks there with you?

10 A Parks was in the car on the outside.

11 Q Did--

12 MR. BRANSTETTER: Now, may it please the Court,
13 then we move the Court to instruct the jury that this is
14 totally incompetent testimony.

15 THE COURT: Yes.

16 MR. HOOKER: We insist, if your Honor please,
17 that at this time that this man was acting as Parks' agent.
18 Parks sent him in there to see what conversation she had
19 with Mattie Leaf as the agent of the Defendant Parks would
20 be admissible.

21 THE COURT: Well, ladies and gentlemen, I would
22 again refer you to the instructions which I have previously
23 given you concerning the situation in which evidence may be
24 admissible to some but less than all of the defendants
25 bearing in mind these instructions, bearing in mind the same

1 instructions that the Court has heretofore given you with
2 regard to when the statement or testimony of a co-conspirator
3 would be admissible as to any other co-conspirator, you will
4 consider that testimony accordingly but you would not con-
5 sider it as to any other defendant or any party not shown
6 to be a party to the conspiracy by other testimony.

7 MR. BRANSTETTER: May it please the Court, we
8 would ask respectfully that the Court order the last state-
9 ment stricken with reference to the conversation between
10 this witness and some third party who has no relationship
11 other than what has been stated. To state otherwise would
12 be--do I understand counsel to insist that this witness here
13 is a co-conspirator?

14 MR. HOOKER: I am insisting when he went into
15 the place out there to see Mattie Leath that he was acting
16 as agent of the Defendant Parks.

17 THE COURT: The statements, however, that the
18 lady by the name of Mattie made would not be competent,
19 would not be considered.

20 MR. HOOKER: All right.

21 BY MR. HOOKER:

22 Q Now, did you go back out to the car?

23 A I did.

24 Q Did anyone go with you?

25 A No.

1 Q How did you leave the place?

2 A Mr. Fields carried me back to my place.

3 THE COURT: Mr. Fields?

4 THE WITNESS: Mr. Parks carried me back to my
5 place.

6 BY MR. HOOKER:

7 Q Did Parks say anything else to you at that time
8 or any other time during the Hoffa trial about the trial?

9 A No, other than when we left he said that he had
10 to do something, that's all.

11 MR. SCHIFFER: Move the question and answer be
12 stricken, your Honor.

13 THE COURT: Overruled.

14 BY MR. HOOKER:

15 Q State whether or not he said in connection with
16 you or what would be done for you.

17 MR. BRANSTETTER: Now, may it please the Court,
18 he is leading the witness. He has said that nothing else
19 was said.

20 MR. HOOKER: I am directing his attention to
21 that, if your Honor please, that is not leading, I submit.

22 MR. SCHIFFER: Not only leading, may I suggest,
23 your Honor, but it's actually testifying by Mr. Hooker.

24 THE COURT: Sustain the objection.

25 BY MR. HOOKER:

1 Q What, if anything else, was said by the Defendant
2 Parks, either on your return to town or after that?

3 A The conversation was as to his wanting to take
4 care of me financially and said, "We will take care of you,"
5 that's all.

6 Q Any amount mentioned?

7 A No, sir.

8 MR. BRANSTETTER: Now, may it please the Court--

9 MR. HOOKER: (Interposing) I have a right to
10 ask.

11 MR. BERKE: He said no.

12 MR. HOOKER: That's right, that cures it, don't
13 it?

14 BY MR. HOOKER:

15 Q Now, after this return and since the indictment
16 in this case, have you had any conversation with the Defendant
17 Parks?

18 A He called me one time, I believe since then,
19 no, he and a lawyer came out to my place since that time
20 and wanted to know what I had said to the government agents.

21 Q Were you asked to go anywhere?

22 MR. HAGGERTY: I object unless the time and the
23 place is fixed, your Honor. We are entitled to know that.

24 THE COURT: Sustain the objection.

25 BY MR. HOOKER:

1 Q Can you identify the time? First, can you
2 identify the place where this conversation occurred?

3 A Between the lawyer and--

4 Q (Interposing) Parks and yourself.

5 A I was called at my residence later asking me to
6 come down to the attorney's office and I went, to come down
7 to Mr. Osborn's office.

8 MR. BRANSTETTER: May it please the Court, I
9 believe an appropriate objection here that no conversations
10 following the date of the indictment are admissible to show
11 the substantive offense. I think counsel knows that.

12 MR. HOOKER: We insist it was a continuation of
13 the same plan or scheme, if your Honor please.

14 THE COURT: Do you plan much further examination?

15 MR. HOOKER: No, this about concludes this con-
16 versation of this witness for the government.

17 THE COURT: Well, it's about time for adjournment.
18 I want to hear you on this last objection. I believe under
19 those circumstances, since we are going to have to ask the
20 jury to step out on this matter, we will adjourn the hearing
21 at this time before the jury and the Court will take up then
22 with counsel the objection.

23 Ladies and gentlemen, now observe the same
24 instructions. I am sure you may feel that I am being awfully
25 repetitious in telling you these matters but observe the

1 same instructions. Do not talk about the case among your-
2 selves as you have occasion to engage in conversation with
3 each other, talk about matters other than the lawsuit because
4 it wouldn't be proper for you to begin your deliberations in
5 the case until after the trial is completely over and you
6 have heard everything you should hear and sent to the jury
7 room to begin your deliberations. That is the reason I ask
8 you not to talk about the case among yourselves, don't allow
9 anyone to talk with about it.

10 We will excuse the jury at this time. Mr.
11 Walker, you may be excused also.

12 THE WITNESS: Thank you.

13 (Thereupon, the jury of 12 and 4 alternates and
14 the witness were excluded from the courtroom and the following
15 proceedings were had, to-wit:)

16 THE COURT: All right. The Court will recognize
17 Mr. Branstetter.

18 MR. BRANSTETTER: May it please the Court, on
19 the question on the objection that was last made, the reason
20 that the conversations or statements subsequent to the
21 finding of the indictment are not admissible in evidence
22 is the basis, of course, that at that time, if there had
23 been a conspiracy or concerted action that it has then con-
24 cluded and any statements made by any parties following that
25 are not admissible.

1 THE COURT: Is your objection directed specifi-
2 cally to the admissibility of the testimony as to any party
3 other than the defendant who is alleged to have engaged in
4 the conversation?

5 MR. BRANSTETTER: Yes.

6 THE COURT: All right.

7 MR. SCHIFFER: As part of that objection, if I
8 may, your Honor, I include Mr. Parks in the objection made
9 here because there has been no foundation at all laid for
10 what Mr. Hooker is after now. The conspiracy, if there was
11 one, certainly had terminated by the date of the indictment
12 in this cause. The entire act had to be completed by then,
13 otherwise we would have had a supplementary indictment.

14 THE COURT: What do you have to say on that
15 point?

16 MR. HOOKER: Yes, we think, if your Honor please,
17 that the statement that I was going to prove about a con-
18 versation with the Defendant Parks with this witness after
19 the indictment was returned to the effect asking him if the
20 government people had talked to him and asking him to go to
21 another lawyer's office and saying he would be taken care of
22 is admissible, directly reflecting on the consciousness of
23 his guilt and in furtherance of this conspiracy and part of
24 the whole scheme.

25 MR. SCHIFFER: May I suggest that Mr. Hooker,

1 of course, forgets that the testimony in this case right now
2 is by the Clerk of the court, Mr. Mizell, and Mr. Gratin
3 Fields, the father of Carl, had been discharged from the jury
4 on approximately December 20th or thereabouts and certainly
5 after Mr. Gratin Fields was off the jury it was an impossi-
6 bility of performance to continue after that date to try to
7 subvert and obstruct justice by even speaking with Mr. Gratin
8 Fields, he was off the jury. How could he be affected then
9 for his vote?

10 THE COURT: All right. Well, we have often
11 started off in the morning with an objection. so suppose we
12 start off in the morning with this objection.

13 MR. NEAL: Your Honor, may I point out one point?
14 We submitted a memorandum to the Court at the Court's request
15 in which we pointed out cases whereby you can refresh a wit-
16 ness' recollection. I respectfully direct your attention to
17 that this evening because when they have some witnesses
18 whose recollection needs refreshing.

19 THE COURT: All right.

20 MR. NEAL: As I understand the law, if the
21 witness does not give the full content of the conversation,
22 if he has given the full content before a grand jury or a
23 prior government statement, the government may ask him if
24 he did not testify before the grand jury on such a day or
25 did he not make such a statement and if he says he did then

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the government can say, "Does it refresh your recollection

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to tell you that you said so-and-so?"

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End Tk 35

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Tk 35A .
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1 He says, "Yes, I did."

2 And the government says, "Is that, your testimony,
3 true when it was made?"

4 And he says, "Yes."

5 "Is that your testimony today and it is true
6 today?"

7 Then that becomes his testimony. Your Honor, we
8 may have some difficulty to refreshing some of these
9 witnesses recollection.

10 THE COURT: That matter is not before the Court
11 at this time.

End
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1 MR. SCHIFFER: Except this, Your Honor.

2 THE COURT: Let's not--

3 MR. SCHIFFER: They may not use prior consistent
4 statement to buttress and support the unsupported words and
5 testimony of a witness. It is only when he is taken on
6 cross examination by the cross examiner and the discrepancy
7 arises that they can come back again on redirect, but
8 certainly not in their case in chief on examination.

9 THE COURT: All right. Is there anything further
10 now that we should take up before we adjourn this evening?
11 Anything by any parties? If not, let's adjourn court until
12 nine o'clock--

13 MR. HAGGERTY: I have a brief I have to sign it
14 and sort it out on the very question raised by Mr. Neal.

15 THE COURT: I will appreciate receiving that this
16 evening, Mr. Haggerty. Let's adjourn court until nine o'clock
17 tomorrow morning.

18 (Thereupon, at 4:40 p. m., January 27, 1964,
19 court was adjourned until nine o'clock a. m., January 28,
20 1964.)

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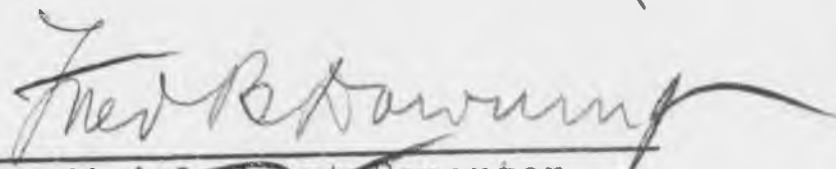
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REPORTER'S CERTIFICATE

I, Fred B. Downing, Official Court Reporter for the United States District Court, for the Eastern District of Tennessee, Southern Division, at Chattanooga, Tennessee hereby certify that Richard Smith and John E. Hamlin, court reporters, in accordance with stipulation of counsel for the parties filed in this case, recorded by machine shorthand the proceedings had in open court in the above styled case on January 27, 1964; and that said proceedings were reduced to typewriting under my supervision; and that the foregoing transcript is a true and correct transcript of the said proceedings to the best of my knowledge.

This the 27th day of January, 1964.


Official Court Reporter

HOFFA J.R.

IN THE DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF TENNESSEE

SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff.

vs.

JAMES R. HOFFA, ET AL,

Defendants.

NO. 11,898

Date: January 23, 1964

Chattanooga, Tennessee

Before: Honorable Frank W.
Wilson, Judge

OFFICIAL TRANSCRIPT OF PROCEEDINGS

VOLUME V

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I N D E X

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FOURTH DAY OF TRIAL

9:00 O'Clock A.M.
January 23, 1964

(Thereupon, pursuant to adjournment from January 22, 1964, court was in session.)

THE COURT: Gentlemen, the Court is of the opinion that Mr. Silets' motion to challenge Mr. Pierce for cause should be sustained, that the cases cited by the government in that regard are not directly on point and that Mr. Pierce will therefore be excused on a challenge for cause.

Now, then if the Clerk will please pass out copies of this.

Gentlemen, look this over and this is in regard to a proposed order on the exercise of peremptory challenges. This is fair a way to administer the exercise of peremptory challenges as the Court was capable of thinking of during the evening and overnight and if any party wishes to comment upon it I will be glad to hear from you.

If not, do I understand that there is no objection then to this method? Is there any question about it?

MR. BRANSTETTER: There is a question, if it please the Court.

THE COURT: All right.

MR. BRANSTETTER: The order may speak clearly but again, by way of example, if there are 12 jurors in the

1 box, as the Court stated there must be under certain con-
2 ditions, and there are two peremptory challenges exercised
3 by the defendant.

4 THE COURT: Yes.

5 MR. BRANSTETTER: Leaving ten, then this would
6 be, I understand passed back to the government.

7 THE COURT: Two jurors put back and passed back
8 to the government.

9 MR. BRANSTETTER: Then the government then makes
10 a challenge, it will come back to the defense, the defense
11 then could challenge any one of the 12 members.

12 THE COURT: That is correct. There is not a
13 misunderstanding in the Court's mind on that and I hope not
14 on counsel's mind.

15 All right. In order that this may be properly
16 entered of record the Court will sign a copy of this.

17 MR. NEAL: Your Honor, this may need clarification
18 here. It says in the first part, "The right to exercise
19 peremptory challenges shall pass from one side to the other
20 so long as there has been any alteration in the composition
21 of the panel since the last previous opportunity to exercise
22 peremptory challenges by the respective side."

23 THE COURT: Yes.

24 MR. NEAL: If the defendant struck two--

25 THE COURT: (Interposing) The defendant passed.

1 for example, an illustration, there's 12 jurors in the box
2 and the defendant passes and the--

3 MR. NEAL: (Interposing) If the defendant
4 struck two.

5 THE COURT: Yes.

6 MR. NEAL: And two more were put in under this
7 statement here, if we passed there has been no change in the
8 panel since the last--

9 THE COURT: (Interposing) Since your last
10 previous time it would be passed over to the defendant and
11 if the defendants challenged one then it would come back to
12 you again.

13 End Tk 1
14 Tk 2 fls.

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1 MR. NEAL: I understand, but if they challenge
2 one and then that man was released and his place filled then
3 it comes back to us, there is no question about that, but if
4 we pass that panel, then there has been no change since they
5 exercised the last peremptory challenge.

6 MR. ALEXANDER: One juror has been added.

7 MR. BERKE: One juror added and we haven't passed
8 on him.

9 MR. NEAL: Is that the meaning of the order then?
10 I don't know whether that is a change from the panel.

11 THE COURT: It is rather unusual how these
12 problems that you knew all your life come up and you find
13 that there still exists matters which you haven't thought of.
14 Well, frankly, gentlemen, it was the understanding and idea
15 of the Court that the challenges would just continue passing
16 back and forth from one side to the other as long as there is
17 any change in the composition of the panel. But once the
18 panel has been approved by both sides and passed by both sides
19 without the exercise of a peremptory challenge, that that be-
20 comes a panel.

21 MR. NEAL: That is the only question I have, your
22 Honor. If they strike one man and that place is filled, then
23 they pass that panel where they could strike him, you see,
24 they have approved twelve.

25 THE COURT: Well, if there is a new man comes on

1 after you have had a right to challenge --

2 MR. NEAL: Right.

3 THE COURT: And you still have any peremptory
4 challenges left, you will have another chance at it.

5 MR. NEAL: I understand that part of it, your
6 Honor, but the twelve goes over to the defendants.

7 THE COURT: All right.

8 MR. NEAL: They strike, let's say they have five
9 challenges and they strike one man and another man comes in
10 and takes his place on the box. They have four more challenges
11 left but they say, "We pass the panel." So, they have looked
12 the panel of twelve and passed it.

13 THE COURT: Yes.

14 MR. NEAL: Now, this comes to us since they
15 struck one I don't have any doubt that we have another one,
16 but then we say, "We pass the panel." Now, the panel has
17 been passed by both sides.

18 THE COURT: You passed the panel. It goes back
19 to the defendants. The defendants are entitled to have the
20 last challenge as long as they have any peremptory challenges,
21 the challenges are going to end up in the hands of the
22 defendants. Is there any objection to that procedure?

23 MR. NEAL: We are not objecting, your Honor. We
24 just want to make sure that we understand it. I suppose that
25 when you say that the challenges always end up with the

1 defendants, it is understandable. Maybe not agreeable, but
2 understandable.

3 THE COURT: Well, gentlemen, I want to be just as
4 fair as I possibly can in this. I want to give everybody the
5 opportunity to exercise their peremptory challenges. If any-
6 body can devise a fairer means of doing it with the defendants
7 always ending up having the last challenge, I will be glad to
8 consider it. But that is imperative in any order that the
9 Court would approve. That is, that the defendants have the
10 last chance to pass on the panel.

11 MR. NEAL: The thing that still bothers me a
12 little bit is that they can always with ten challenges re-
13 maining now, and the government having four, they can always,
14 they can continue to exercise only one challenge and then
15 put us to the hazardous question of passing it or running out
16 of challenges while they still have six remaining. And they
17 can change the entire composition of the jury.

18 THE COURT: Have you got any suggestions as to
19 how that might be obviated and still leave the defendants
20 with the last right to exercise challenges?

21 MR. NEAL: Yes, sir, your Honor. As long as the
22 government had to exercise first, the fair procedure I think
23 would be to require the defendants to exercise if they are
24 going to challenge, exercise not less than two challenges
25 every time.

1 THE COURT: I don't see how I can require a
2 defendant to exercise any number of challenges.

3 MR. NEAL: Well, I think that you have--

4 THE COURT: (Interposing) They can exercise
5 ever how many they wish.

6 MR. NEAL: I say not less than two, Your Honor,
7 if they are going to exercise any or else they pass. Of
8 course, you can't require them to or else that one challenge
9 lapses, it's gone.

10 THE COURT: Wouldn't that order really be negatory?
11 Suppose I ordered them to exercise two, they exercised one
12 and passed it back? They still have the right to come back
13 to the last challenge.

14 MR. NEAL: But they have passed, they have lost
15 their challenge. If we have to exercise one, they have to
16 exercise two, two or lose.

17 THE COURT: No, I am not going to take any
18 challenges away from the defendants, no, sir. I just can't
19 see any way--

20 MR. SCHIFFER: (Interposing) Your Honor, I believe
21 the defense is in agreement with Your Honor's version of what
22 should be done, so long as the defense has the last challenge
23 I don't think there is any problem.

24 THE COURT: All right. I want you to have the
25 opportunity to express yourself on it, though. Unless there

1 is some other suggestion other than has been made so far the
2 Court will approve this order and will read it into the
3 record.

4 "The peremptory challenges then will be exercised
5 in the following manner:"

6 "The right to exercise peremptory challenges
7 shall commence with the government and shall pass to the
8 defendants. Thereafter the right to exercise peremptory
9 challenges shall pass alternately from one side to the other
10 so long as there has been any alteration in the composition
11 of the panel since the last previous opportunity to exercise
12 a peremptory challenge by the respective side or until all
13 peremptory challenges have been exhausted, with the defendants
14 always having the last right to exercise peremptory challenges
15 until they have exhausted all peremptory challenges assigned
16 to the defendants. Neither side shall be required to exercise
17 peremptory challenges when less than 12 jurors are in the
18 box."

19 THE COURT: All right.

20 MR. HAGGERTY: May I address the Court briefly?

21 THE COURT: Yes, sir.

22 MR. HAGGERTY: Your Honor, this is rather a
23 continuation of a motion I made yesterday, Your Honor. Again
24 today in the Chattanooga Times, under date of January 23,
25 1964, the continuation of the story with reference to or

1 entitled "Judge Questions Jury Prospects" on Page 1, is
2 continued on Page 9, then next to that story is a repetition,
3 in a sense a rehash of the story in reference to the keeping
4 of double books that Mr. Reynolds attributed to Mr. Hoffa
5 and that article is under a Washington dateline to the effect
6 that Senator McClellan, an arch enemy of Mr. Hoffa, had
7 called for a follow-up investigation that Teamsters Union
8 President Hoffa once said he kept two sets of books and would
9 show only one of them to Senate probers. Senator Curtis
10 told reporters he has called the testimony to the attention
11 of Senator John McClellan, Democrat-Arkansas, Chairman of
12 the Senate Investigation Subcommittee, which has investigated
13 Hoffa in the past. McClellan told a reporter the committee,
14 of course, is interested and has obtained the transcript of
15 Reynolds' testimony.

16 I say, may it please the Court, that such publica-
17 tion bears out what I have previously said to the Court. That
18 papers, of course, are interested in disseminating news and
19 the more sensational the better, it helps sell papers, but
20 this bears out what I have informed the Court, both the
21 Nashville and in Chattanooga, that these stories are rehashed
22 and repeated and kept before the public and I say that one
23 would indeed have to be naive if they did not think that the
24 jurors, the remaining jurors on the panel, had undoubtedly
25 or some of them had read this article.

1 Therefore, I move again , may it please the Court,
2 for a continuance in this case and ask permission to file
3 as an exhibit the Chattanooga Daily Times of January 23rd,
4 1964.

5 THE COURT: All right. You will be permitted to
6 file the paper. The motion should be overruled.

7 (The paper referred to above was marked
8 Exhibit No. 9, Defendant Hoffa, and
received in evidence.)

9 THE COURT: Now, then we have at this time ten
10 prospective jurors, is that correct?

11 MR. DALE: Yes, Your Honor.

12 THE COURT: Let's call--

13 MR. NEAL: (Interposing) Your Honor, shouldn't we
14 determine if the defendants are through with their challenges?

15 THE COURT: Do you desire to exercise any further
16 challenges at this time?

17 MR. BERKE: The box is not full, Your Honor.

18 THE COURT: Well, the Court understood that.

19 MR. BERKE: We are not required to under the order.

20 THE COURT: The Court was proposing to go ahead
21 and get further jurors but if you want to exercise further
22 challenges.

23 MR. BERKE: No, Your Honor.

24 THE COURT: Call 15 prospective jurors.

25 MR. DALE: No. 160, Kenneth Hurst.

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No. 155, Edsel V. Morrison.

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No. 153, J. D. Starnes.

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No. 189, Marshall T. H. Stewart.

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Pk 4
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1 THE CLERK: No. 141, Irvin Morris Shipley.
2 THE COURT: Irvin what?
3 THE CLERK: Morris.
4 THE COURT: The last name?
5 THE CLERK: Shipley.
6 THE COURT: (Spelling) S-h-i-p-m-a-n?
7 THE CLERK: Shipley. (Spelling) S-h-i-p-l-e-y.
8 No. 198, John A. Kilgore.
9 No. 180, William Gordon Darnell, Jr.
10 No. 185, Harry W. Tyler.
11 THE COURT: Harry Power?
12 THE CLERK: Tyler. (Spelling) T-y-l-e-r.
13 No. 182, Charles A. Campbell.
14 No. 181, William Link. (Spelling) L-i-n-k.
15 No. 159, Hoyle F. Albritton.
16 THE COURT: Hoyle?
17 THE CLERK: Hoyle. (Spelling) H-o-y-l-e.
18 No. 156, John V. Arp. (Spelling) A-r-p.
19 No. 110, Hal W. Bullen. (Spelling) B-u-l-l-e-n.
20 THE COURT: I missed the first name.
21 THE CLERK: Hal. (Spelling) H-a-l B-u-l-l-e-n.
22 No. 121, Bruce Ringer. (Spelling) R-i-n-g-e-r.
23 And No. 105, Annie L. Guinn. (Spelling) G-u-i-n-n.
24 THE COURT: All right, if the officers will ask
25 those jurors to report to the courtroom. You may also advise

1 Mr. Pierce if you have not done so that he has been excused.

2 MARSHAL MANSFIELD: He has been advised, your
3 Honor.

4 (Thereupon, the venire of 15 was brought into
5 the courtroom.)

6 THE COURT: Ladies and gentlemen, the Court if
7 it had any medals to award would award medals to all these
8 jurors that have been waiting all this time. I have none.
9 The only award that I can give you is that to assure you
10 that you even though you have been waiting, you have been
11 performing a most essential and a most important part of the
12 duties of citizenship.

13 Remember during the war it seems like we spent
14 most of our time hurrying up and waiting and I guess there
15 are other activities besides the experiences in the Army
16 that call on us to hurry up and then to wait.

17 I regret very much the necessity of requesting
18 that you be available during the last three days when matters
19 actually developed you weren't called during those three days,
20 but we've been calling jurors on the basis of shuffling cards
21 and drawing names by lot and, therefore, it was certainly
22 not by any design that anyone was either drawn or that anyone
23 was not drawn during this period of time.

24 I just hope that you will bear with us and have
25 an understanding and recognize and appreciate the fact that

1 you are performing one of the most essential duties of
2 citizenship, even though as I say you have been waiting.

3 Certainly any inconvenience that has been caused
4 you in this connection, you should not in any respect bear
5 that against either side in this lawsuit. The responsibility
6 for the procedure that has been followed is the Court's
7 responsibility and if anyone has in any respect been at fault
8 in that regard it has been the Court. So if you feel badly
9 toward anyone, if you feel that you must feel badly toward
10 anyone, feel badly toward the Court and not toward either
11 side or anyone in this procedure by reason of this necessity.

12 E. A. Tk 4
13 Tk 5 fls.

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1 Now, then, ladies and gentlemen, the Court has
2 concluded in this case that in the interest of a fair and
3 impartial trial that the jury should remain together through-
4 out the trial of this case and until the case is decided. In
5 doing that it will mean that the jury will remain at a local
6 hotel here in Chattanooga during the evening.

7 You will be permitted to have necessary contacts
8 with your family and with any other necessary contacts, those
9 contacts would have to be under circumstances whereby that
10 there would be someone present with you, an officer present,
11 but also there will be officers who will be waiting on you
12 and will be available for any reasonable request that you may
13 have.

14 We want to make those who might be selected upon
15 this jury, we want to make their service just as comfortable
16 as we can. We want to make it the least burdensome possible
17 and these gentlemen have been instructed by the Court to
18 render any and every assistance to make the service of the
19 jury both comfortable and the least burdensome, but, as I
20 have indicated, the Court has concluded that that should be
21 done in the case.

22 Now, is there any reason why any juror on this
23 panel cannot serve under those circumstances? Is there any
24 juror that feels he cannot serve under those circumstances?

25 All right. Ladies and gentlemen, at this time all

1 of the parties are interested in your views, they are interested
2 in determining something about you and in having some
3 sufficient information to pass intelligently upon your quali-
4 fications to serve on this case and to serve fairly and to
5 serve impartially.

6 The entire purpose of the conduct of the selection
7 of a jury is to give the parties every reasonable opportunity
8 to select a jury which they feel will be fair and will be
9 impartial in the case and in trying the case.

10 Let me -- I have accumulated quite a few records
11 already in this matter, so if you will pardon me while I
12 try to find my way through them.

13 Let me be certain, ladies and gentlemen, that
14 each of you meet the qualifications for serving on a jury
15 within this division. This court is the United States District
16 Court for the Eastern District of Tennessee, and its juris-
17 diction extends to the geographic area generally known as
18 Eastern Tennessee, however, the district itself is divided
19 up in two divisions and this is the Southern Division. This
20 Southern Division is made up of eight counties, and this jury
21 is drawn from those eight counties.

22 So first we wish to determine whether or not you
23 are residents within this division of the United States
24 District Court and as soon as I have available the list of
25 the eight counties, the eight counties in this division are

1 Bledsoe, Bradley, Hamilton County, McMinn County, Marion
2 County, Meigs County, Polk County, Rhea County, and Sequatchie
3 County.

4 Now, are all members of this panel residents of
5 one of those eight counties?

6 Are each of you over the age of twenty-one years?

7 Are each of you citizens of the United States of
8 America?

9 Have either of you served upon a jury within this
10 court, United States District Court, within the past year
11 immediately past?

12 The case that is for trial is the case of the
13 United States of America versus James R. Hoffa, Larry Camp-
14 bell, Thomas Ewing Parks, Allen Dorfman, Nicholas J. Tweel,
15 and Ewing King.

16 There will be for trial before this court various
17 counts in the indictment which in general charge one or more
18 of the defendants in each count with violating the laws of
19 the United States relating to the matter of having corruptly
20 endeavored to influence, intimidate, impede, or obstruct
21 justice and the administration of justice in a United States
22 District Court, namely, the United States District Court at
23 Nashville, Tennessee.

24 It is alleged in the indictment that this offense
25 or these offenses occurred during the months of October and

5 - 4 1 November of 1963 -- '62, a year ago this past October and
2 November.

3 Now, then, with that general statement of the
4 charges made against the defendants, is there any person on
5 the panel who has any knowledge or any information about the
6 charges or about any matters out of which the charges grew?

7 Lady and gentlemen, the defendants as I have just
8 identified them and with the consent of the defendants and
9 the consent of their counsel, I should like to introduce them
10 and to introduce their attorneys, as well as the government
11 attorneys, to the jury panel in order that you may see and
12 identify them and then I should like to ask you some questions
13 in that regard.

14 (Each person named stood as his name was called
15 by the Court.)

16 THE COURT: The defendants are Mr. James R. Hoffa,
17 and Mr. Hoffa is represented by Mr. Haggerty, an attorney of
18 Detroit, Michigan; Mr. Harry Berke, an attorney of Chattanooga,
19 Tennessee; and Mr. Marvin Berke, an attorney of Chattanooga,
20 Tennessee.

21 The next defendant is Mr. Larry Campbell. Mr.
22 Campbell is a resident, I believe, at this time, of Detroit,
23 Michigan, and he is represented by Mr. Cecil Branstetter, an
24 attorney of Nashville, Tennessee.

25 The next defendant is Mr. Thomas Ewing Parks. Mr.

1 Parks is a resident of Nashville, Tennessee, and he is
2 represented by Mr. Jacques M. Schiffer, an attorney of New
3 York City.

4 The next gentleman who is a defendant in the case
5 is Mr. Allen Dorfman. Mr. Dorfman is a resident of Chicago,
6 Illinois, and he is represented by Mr. Harvey M. Silets, an
7 attorney of Chicago, Illinois.

8 The next defendant is Mr. Nicholas J. Tweel. Mr.
9 Tweel is a resident of Huntington, West Virginia, and he is
10 represented by Mr. Dave Alexander, an attorney of Franklin,
11 Tennessee, and by Mr. Henry Grady, an attorney of Chattanooga,
12 Tennessee.

13 And the last defendant is Mr. Ewing King, a
14 resident of Nashville, Tennessee, and he is represented by
15 Mr. Harold Brown, an attorney of Chattanooga, Tennessee.

End TK 5
TK 6 fls

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1 THE COURT: The government in the case is represented
2 by Mr. John Hooker, an attorney of Nashville, Tennessee.

3 (Mr. Hooker standing.) Mr. James Neal, an attorney with the
4 United States Attorney's Office from Washington, D. C.

5 (Mr. Neal standing.) And Mr. Jack Reddy, United States
6 District Attorney for this district. (Mr. Reddy standing.)

7 Now, then, ladies and gentlemen, are there any
8 members on this panel who are in any way acquainted with or
9 in any way related to either of the defendants, Mr. Hoffa,
10 Mr. Campbell, Mr. Parks, Mr. Dorfman, Mr. Tweel, Mr. King?

11 Yes, sir.

12 MR. STEWART: Your Honor, I know attorney Mr.
13 Brown. Mr. Harold Brown.

14 THE COURT: All right, I was going to ask about
15 the attorneys. You may remain seated as you respond to the
16 questions.

17 Let's first direct our inquiries to the defendants
18 whom I have named, the six defendants. As I understand from
19 your silence there is no member of the jury who is in any
20 way acquainted with or in any way related to either of the
21 defendants.

22 Now, then, are there any members of the jury who
23 are in any way acquainted with or in any way related to either
24 of the attorneys representing the government in the case,
25 Mr. Hooker, Mr. Neal, or Mr. Reddy?

1 Any member of the panel acquainted with these
2 gentlemen?

3 Any member of the panel now who are in any way
4 acquainted with either of the attorneys representing the
5 various defendants which attorneys the Court has introduced
6 to you?

7 MR. DARNELL, NO. 180: Yes, sir.

8 THE COURT: Let's take and if you will announce
9 your name, please.

10 MR. DARNELL: Gordon Darnell. I'm acquainted with
11 Mr. Marvin Berke through business.

12 THE COURT: Mr. Darnell, generally what is that
13 acquaintanceship and how well?

14 MR. DARNELL: Just through business. I'm with the
15 American National Bank and it is through his business through
16 our bank.

17 THE COURT: Is he a customer?

18 MR. DARNELL: He is a customer of our bank, but
19 indirectly through me. I don't deal with him directly.

20 THE COURT: Do you have any other business, have
21 you ever had any occasions to call upon him for professional
22 services?

23 MR. DARNELL: No, sir.

24 THE COURT: He has never represented you in any
25 manner?

1 MR. DARNELL: No, sir.

2 THE COURT: And his acquaintanceship then is as
3 a representative of the bank where you are employed?

4 MR. DARNELL: Yes, sir.

5 THE COURT: And would that in any way interfere
6 with your performing your duties fairly and impartially and
7 deciding this case solely on the evidence as you hear it from
8 the courtroom and the law as may be instructed to you by the
9 Court?

10 MR. DARNELL: Not in that relationship. I would
11 not so desire to make any decision because of the relation-
12 ship.

13 THE COURT: In other words, the fact that you
14 are acquainted with him and the fact that he is a customer of
15 your bank, would that cause you to change your opinion one
16 way or the other?

17 MR. DARNELL: No, sir.

18 THE COURT: Could you perform your duty
19 irrespective of that relationship?

20 MR. DARNELL: Yes, sir.

21 THE COURT: As you in good conscience see that
22 it should be performed?

23 MR. DARNELL: Yes, sir.

24 THE COURT: Yes, sir, the other gentleman.

25 VENIREMAN: My name is Harry W. Tyler. And I

1 know Attorney Berke and Attorney Grady as practicing attorneys
2 having served on jury duty in the courts in the past.

3 THE COURT: That was Mr. Berke and what other
4 gentleman?

5 MR. TYLER: Mr. Grady.

6 THE COURT: Mr. Grady, and your only acquaintance-
7 ship with these gentlemen is having served upon juries in
8 cases in which they were in court?

9 MR. TYLER: That's right.

10 THE COURT: Have either of these gentlemen in any
11 way represented you professionally?

12 MR. TYLER: No, sir.

13 THE COURT: Was this relationship with either of
14 these defendants such as to in any way influence you in a
15 decision of this case?

16 MR. TYLER: No, sir.

17 THE COURT: Either to either be favorable for or
18 to have any prejudice against their client or against the
19 favor of or against the government, would that relationship
20 have any such influence upon you?

21 MR. TYLER: No, sir.

22 THE COURT: All right, the next gentleman?

23 THE VENIREMAN: Kenneth Hurst.

24 THE COURT: All right, Mr. Hurst. No. 160.

25 MR. HURST: Yes, sir, I had occasion to call on

1 Mr. Berke for professional services.

2 MR. REDDY: Who? Mr. who?

3 MR. HURST: Harry Berke.

4 THE COURT: Sorry, I still didn't understand the
5 name.

6 MR. HURST: Mr. Berke.

7 THE COURT: When was this representation?

8 MR. HURST: This was because of an automobile
9 accident I was in. I had a claim against an insurance company.

10 THE COURT: How long ago was that?

11 MR. HURST: About five or six or seven years ago,
12 seven years.

13 THE COURT: I believe we will excuse you then,
14 sir. What was your name, sir?

15 MR. REDDY: No. 160, Your Honor. Mr. Hurst.

16 THE COURT: All right, any other gentleman or lady
17 on the jury that are acquainted with any of the attorneys
18 involved in the case?

19 Yes, sir, you indicated some acquaintanceship.
20 Would you state your name?

21 THE VENIREMAN: Marshall Stewart. I just know
22 Mr. Brown as a Shriner. He is an officer in the Alhambra
23 Shrine and I'm a member of that Shrine Temple and I just
24 know him.

25 THE COURT: Which gentleman is that?

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MR. STEWART: MR. Harold Brown.

THE COURT: Mr. Brown?

MR. STEWART: Yes, sir.

THE COURT: And it is just by virtue of your membership in the organization that you are acquainted with him?

MR. STEWART: That's right. Yes, sir.

THE COURT: Have you ever had occasion to consult him professionally?

MR. STEWART: No, sir.

THE COURT: Have you ever had any business transactions with him?

MR. STEWART: No, I haven't.

THE COURT: Is your acquaintanceship with him such that you would consider it a close acquaintanceship?

MR. STEWART: Well, no, sir, he has never been in my home and I have never been in his home.

THE COURT: Would that relationship in any way influence you in the performance of your duties here in deciding the case fairly and impartially and solely on the evidence in the instructions of the Court?

MR. STEWART: No, it wouldn't.

THE COURT: Would that relationship in any way cause any possible embarrassment to you in performing your duties as a juror?

1 MR. STEWART: I wouldn't think so.

2 THE COURT: Any other gentleman or lady who are
3 acquainted with any attorney representing any of the
4 defendants?

5 Ladies and gentlemen, have any of you formed or
6 expressed an opinion at any time as to either the guilt or
7 the innocence of either of the defendants in this case?

8 MR. DARNELL: Judge--

9 THE COURT: Yes, sir, excuse me.

10 MR. DARNELL: Gordon Darnell again, Your Honor.
11 I have not formed an opinion as to the guilt or non-guilt
12 of the defendants involved nor have I discussed it since my
13 being called and summoned as a juror. However, I have formed
14 an opinion and I feel that I am prejudiced not as to the guilt
15 of this case or the non-guilt of it, but as to my prejudices
16 and my prejudiced feelings. I have read about the case and
17 I've been familiar with it since year before last.

18 THE COURT: I see. You have kept up with matters?

19 MR. DARNELL: Not in detail, sir, but I have
20 followed it along.

End
Tk 6

Tk 7
follows

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1 Darnell

2 Q You think that might interfere with your giving
3 a fair and impartial trial in the case? It might influence
4 your judgment in, say either consciously or subconsciously?

5 A To be honest, sir, I am afraid it could.

6 THE COURT: All right. Well, you will be excused.

7 MARSHAL SERTEL: What is your name?

8 MR. DARNELL: Darnell, Gordon Darnell, No. 180.

9 THE COURT: Who was the other gentleman that the
10 Court excused?

11 MR. BERKE: Hurst.

12 MR. SAULPAW: No. 160.

13 MR. REDDY: Darnell, 180 and Mr. Stewart No. 189
14 was excused, is that right?

15 THE COURT: No, 160 and 180 are the two that the
16 Court excused.

17 MR. SAULPAW: 180 and 160?

18 MR. DALE: And, of course, Mr. Pierce.

19 THE COURT: Do either of the jurors in the panel
20 have any prejudice against or any sympathy for any party in
21 this lawsuit that would prevent your trying this case solely
22 upon the evidence heard in open court and the instructions
23 of the Court? Is there any member of this jury panel who
24 has any sympathy for any party in this case that would
25 prevent you from trying the case solely upon the evidence

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1 heard in open court and the instructions of the Court?

2 Are either of you a member of any organization
3 in which either of the defendants are a member to your knowl-
4 edge, either as a member or as an officer?

5 Have either of you read or heard or seen anything
6 that has caused you to form an opinion in the case so that
7 your mind is not open for a fair and impartial consideration
8 of the evidence heard in open court under the supervision of
9 the Court and to decide this case solely on the evidence that
10 is heard here in open court and on the instructions of the
11 Court?

12 As you sit there now, is there any member of the
13 jury who has any opinion as to the guilt or the innocence
14 of any defendant or who would require any evidence to be
15 introduced to overcome any such opinion or any reservation
16 in your mind before you could enter upon your deliberation
17 or enter upon your duties as a juror fairly and impartially?

18 Do any of you know of any reason why you could
19 not, if selected to sit upon this case, give a fair and
20 impartial trial to both the government and to the defendants
21 and to each defendant?

22 Would each of you accept the law as it is given
23 to you by the Court and apply that law to the evidence as
24 you may hear the evidence in the case without attempting to
25 substitute your own opinion as to what you think the law

1 ought to be if your opinion of what the law should be is
2 different from that which the Court instructs you which is
3 the law?

4 Do each of you understand the importance of
5 trying the case on the instructions of the Court and do you
6 understand that this is not a law making body and that we
7 have no authority to make law here but rather it is your duty
8 to apply the law as it is given to you by the Court and
9 leave the matter of making law to our proper legislative
10 authority?

11 Do each of you feel that you understand the
12 reason for and the necessity of trying this case solely on
13 the basis of the evidence that is heard in open court and
14 which is introduced under the supervision of the Court and
15 not allowing this case or not allowing any facet of the case
16 to be tried or to be decided in your mind on the basis of
17 anything that might come from any other source?

18 Do you understand how unfair that would be to
19 either side in this lawsuit if any juror were to allow his
20 opinion to be influenced by information that might have come
21 to him from some other source other than in the open court?

22 These parties, both the government and each of
23 the defendants are entitled to hear and to know everything
24 that is introduced to you for the purpose of a decision of
25 this lawsuit and it would be grossly unfair if any juror

7 - 4 .
1 were to decide the case upon anything that he might have
2 heard or seen or might hear or see other than the evidence
3 that you are permitted to hear and instructed to consider
4 by the Court?

5 Now, then if I may address myself to each of you
6 individually, I wonder, since we have two vacant seats, if
7 we might have two jurors come and take these seats, then we
8 have, may we have the other gentlemen move up a little closer?
9 That is right.

10 (Thereupon, the members of the venire followed
11 the instructions of the Court.)

12 THE COURT: Which gentleman is Mr. Kenneth Hurst?

13 MR. HOOKER: He was excused.

14 MR. SAULPAW: He was excused, your Honor.

15 THE COURT: Which gentleman is Mr. Kenneth Hurst?

16 MR. HOOKER: He was excused.

17 MR. SAULPAW: He was excused, your Honor.

18 THE COURT: Which gentleman is Mr. Edsel W.
19 Morrison?

20 (Venireman Morrison held up his hand.)

21 EDSEL W. MORRISON,

22 a venireman, having been first duly sworn, was examined and
23 answered as follows:

24 EXAMINATION BY THE COURT:

25 Q All right, Mr. Morrison, I see that you live

1 here in Chattanooga. Where is Howell Road?

2 A It's in Brainerd, sir.

3 Q Brainerd. What family do you have, Mr. Morrison?

4 A Two daughters and a son.

5 Q Where did you receive your education?

6 A At Richmond, Kentucky, Eastern Kentucky State
7 College.

8 Q Was your home originally in Kentucky?

9 A Yes, sir.

10 Q I notice that you list your occupation as Deputy
11 Director of the Civil Defense. How long have you held that
12 position?

13 A Be three years this spring.

14 Q And before that employment where were you employed?

15 A Life insurance.

16 Q What connection did you have with life insurance?

17 A I served as an agent and as a staff manager and
18 as an office manager for Commonwealth Insurance Company.

19 MR. SILETS: Can't hear.

20 Q If each juror will please remember everybody in
21 the courtroom is very much interested in what you have to say.

22 A I served in the life insurance business with
23 Commonwealth Life Insurance Company of Louisville as an
24 agent, as a staff manager and as an office manager at dif-
25 ferent times during the eight years I was with that company.

1 Q And where was that employment?

2 A I moved quite a bit, your Honor, Indianapolis,
3 Indiana, Cincinnati, Middletown, Ohio, Birmingham, Alabama,
4 and here in Chattanooga.

5 Q Who is the Director of Civil Defense under whom
6 you work?

7 A We have no director right at this particular
8 time, your Honor. Mr. Marble Hensley was the director and
9 he recently resigned and went into business for himself.
10 The mayor and the judge for whom I work have not appointed
11 the director as of this date.

12 Q Who does employ you?

13 A I work jointly for the city and the county and
14 50 per cent of my salary is paid by the federal government.

15 Q I see. Who selected you for the position, what
16 person or persons, what official?

17 A There is a group of persons at City Hall that I
18 spoke to, four different people, heads of different depart-
19 ments, also the mayor and the county judge all selected me
20 in that position.

21 Q And you say that a portion of your salary is
22 paid by the United States Government?

23 A Yes, sir.

24 Q Is there anything in that relationship that
25 would in any way influence you or in any way prejudice you

1 in the trial of this lawsuit, should you be selected to try
2 the case?

3 A No, sir. May I add--

4 Q (Interposing) Generally what are your duties
5 as Civil Defense Director?

6 A Primarily right now for the last five months we
7 have been pretty much tied up in delivering fallout shelter
8 supplies to public shelters in our buildings in the city and
9 county. This involves most of our time and at other times,
10 why, we speak to groups concerning phases of civil defense
11 and protection and survival and things of that sort.

12 Q Other than the fact that the federal government
13 pays a portion of your salary at this time, have you had any
14 previous or other employment with the United States Government?

15 A No, sir.

16 Q Has any member of your family had such employment
17 or do they now have such employment?

18 A No, sir.

19 Q Have you had any relations with the United States
20 Government that would cause you in any way to be prejudiced
21 against the prosecution in this case or in favor of the
22 prosecution in this case?

23 A No, sir.

24 Q Have you had any relationship with the United
25 States Government that would cause you to be prejudiced

1 against any defendant in this case or in favor of any
2 defendant in this case?

3 A No, sir.

4 Q Do you now have any litigation pending or have
5 you been involved in any litigation during your lifetime,
6 either as a party to that litigation or as a witness?

7 A None at all.

8 Q Have you ever had any previous jury service?

9 A No, sir.

10 Q Have you ever been a member of any labor organi-
11 zation or are you now a member of a labor organization?

12 A I have been a member of the United Mine Workers
13 back in, oh, for a period of about six years from about '46
14 to about '52, I guess.

15 Q Is any other member of your family a member of
16 any labor organization?

17 A No, sir.

18 Q Has your relationship with any labor organization
19 been such as to cause you to feel any prejudice for or--any
20 prejudice against or any sympathy for any party in the law-
21 suit?

22 A No, sir.

23 Q Have you had any connection with the Teamsters
24 Union?

25 A No, sir.

1 Q Have you received any benefit from or any detri-
2 ment from any activity of the Teamsters Union?

3 A No, sir.

4 Q Is there anything in connection with the activi-
5 ties of labor unions in general, or the Teamster Union in
6 particular, that would cause you to have any sympathy for
7 or any prejudice against any party in this lawsuit? Did you
8 understand the question?

9 A I wish you would state it again, sir.

10 Q Is there anything, any union relationship that
11 would cause you to have any sympathy for or any prejudice
12 against any party in this lawsuit and prevent your trying
13 the case fairly and impartially?

14 A No, sir.

15 Q Do you have any feeling against a person of
16 another race that would in any way interfere with your trying
17 the case fairly and impartially?

18 A No, sir.

19 Q Do you feel that all people, irregardless of
20 race, are entitled to equal treatment before the law?

21 A Yes, sir.

22 Q To what extent, if any, have you read or heard
23 any publicity or news accounts relating to this trial or
24 related to any party involved in the trial?

25 A I have read the newspapers and listened to

1 television during the time, I guess, as you said, October and
2 November a year ago. As far as any of the details involved
3 I probably could not recall any but I have listened to them
4 and I have heard them.

5 Q What publicity in that regard have you read, I
6 mean what newspaper, for example?

7 A The local papers, sir.

8 Q The local, you are referring to the Chattanooga
9 papers?

10 A Yes, sir.

11 Q The Free Press and the Times?

12 A Right.

13 Q Was there anything in anything that you may have
14 read or heard that has caused you to form an opinion in this
15 case as to the guilt or innocence of any party charged with
16 an offense?

17 A No, sir.

18 Q Did you in any way request or seek selection
19 upon this jury?

20 A No, sir.

21 Q Has anyone talked with you or in any way com-
22 municated with you about this case or about your serving as
23 a juror in this case in a manner that would seek to influence
24 you in any way in serving upon the jury?

25 A No, sir. Numerous people have commented on it

1 but it has more or less been seeking information if I were
2 a member and they had seen my name in the paper concerning
3 it, but it wasn't--

4 Q (Interposing) Have any of those people expressed
5 an opinion about the case to you?

6 A No, sir.

7 Q Have any of those people--have you expressed an
8 opinion to any of those people?

9 A No, sir.

10 Q About the case. Could you identify any of the
11 persons who may have spoken to you about the case or about
12 your jury service?

13 A Persons in the office where I work. Would you
14 like me to name their names?

15 Q Well, go ahead and identify any other source.

16 A Well, numerous persons I have met on the street
17 or around my home and all just commented more or less on the
18 fact that they noticed that I had been selected or summoned
19 as a juror.

20 Q Was there any statement made by any person who
21 may have commented to you purporting to know any of the facts
22 of this case?

23 A No, sir. In fact, I, when it has been mentioned
24 I have asked after, of course, your instruction to us Monday
25 that I was not supposed to discuss this and they all have

1 been very nice and not pushed the issue.

2 Q In any of those contacts, was there anything that
3 you would consider out of the ordinary?

4 A No, sir.

5 Q Anything occurred that you might consider other
6 than normal interest of some friend or acquaintance?

7 A No indication at all of that, sir.

8 End Tk 7
9 Tk 8 fls.

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1 Q Did anyone speak to you about jury service before
2 you received a subpoena?

3 A No, sir.

4 Q Before you received a subpoena in this case?

5 A No, sir.

6 Q Are you subject to any pressures or any influences
7 from any source that might prevent you from rendering a fair
8 and impartial verdict based upon the evidence and the law
9 in this case?

10 A No, sir.

11 Q Do you have any prejudice against anyone else
12 because he may reside in another state and be on trial here?
13 Or may be an attorney in the case, would that cause you to
14 have any prejudice for or sympathy against such person?

15 A No, sir.

16 Q Since you have been here and having reported upon
17 Monday, have you received any information or had any ex-
18 perience that would prevent you in any way or influence you
19 in any way from being other than impartial in the case?

20 A No, sir.

21 Q Would you be willing to judge each individual
22 witness that might appear in the case upon his individual
23 merit giving no preference nor in any way discounting the
24 testimony of any witness merely because he was produced by
25 one side of the lawsuit or by another side of the lawsuit?

1 Would you judge each witness individually on his own individual
2 merit?

3 A Yes, sir.

4 Q Would you judge each witness individually upon
5 his own merit irrespective of whether he was on the one hand,
6 say, a law enforcement officer or on the other hand of some
7 other occupation or calling?

8 A Yes, sir.

9 Q What organizations are you a member of, Mr.
10 Morrison?

11 A Masonic Order and Alhambra Temple, the Shrine;
12 Brainerd Methodist Church. Those are perhaps the only two,
13 your Honor.

14 Q All right, do you hold any office or position in
15 any of these organizations?

16 A Yes, sir. At our church I am the President of
17 the Methodist Men's Club.

18 THE COURT: Mr. Starnes, which gentleman is Mr.
19 Joe Starnes? Yes, sir.

20 JOE STARNES,

21 a venireman, having first been duly sworn, was examined and
22 answered as follows:

23 EXAMINATION BY THE COURT:

24 Q Mr. Starnes, you live at 3913 Memphis Drive;
25 what portion of Chattanooga is that?

1 A That is out north of the railroad out by DuPont
2 right off Access Road.

3 Q Speak up now so all the gentlemen can hear you.

4 A Right off Hixson Pike, the Access Road that goes
5 to DuPont, fourth house on the right.

6 Q Mr. Starnes, I see that you are married, what
7 family do you have?

8 A Three boys.

9 Q What range of ages are your children?

10 A Twelve, six, and fourteen months.

11 Q Where were you raised?

12 A Coffey County.

13 Q And did you take your schooling there, did you
14 go to school there?

15 A Yes, sir. Finished high school at Manchester.

16 Q I notice you list your occupation as a mechanic,
17 could you tell us more specifically what you do?

18 A Preventive maintenance at DuPont, just work on the
19 machinery that makes the nylon threads. Millwright.

20 Q How long have you held that job?

21 A Fifteen years.

22 Q Have you been with the same company?

23 A Fifteen years.

24 Q What formerly did you do, what did you do before
25 that?

1 A I was farming and carpentering.

2 Q Where did you do that?

3 A Coffey County.

4 Q Are you now or have you at any time in the past
5 had any connection with or employment by the United States
6 Government?

7 A No, sir.

8 Q Any member of your family who has or who is now
9 so employed?

10 A No, sir, I have two brothers-in-law that works
11 for the United States Government.

12 Q Two brothers-in-law, what do they do?

13 A One of them is a seed inspector.

14 Q A what?

15 A Seed inspector and the other one is a soil
16 conservationist.

17 Q And where are they employed?

18 A Nashville, Tennessee. And in East Tennessee, one
19 of them is.

20 Q Have you had any experiences with the government
21 that would cause you to be either prejudiced against or any
22 sympathy for the prosecution in this lawsuit?

23 A No, sir.

24 Q Have you had any such experience with the govern-
25 ment that would cause you to be prejudiced against or sympathy

1 for any defendant in this case?

2 A No, sir.

3 Q Do you have any litigation now pending or have
4 you ever been involved in any litigation either as a party or
5 as a witness?

6 A No, sir.

7 Q Have you had any previous jury experience?

8 A No, sir.

9 Q Are you in any way connected with any labor
10 organization?

11 A No, sir.

12 Q Have you ever been a member of any labor organiza-
13 tion?

14 A No, sir. We have just an independent union at
15 DuPont is the only union I ever belonged to.

16 Q Have you ever received any benefits by or
17 suffered any detriments from any union activity that would
18 cause you to be either sympathetic for or prejudiced, pre-
19 judicial against any party in this lawsuit?

20 A No, sir.

21 Q Is there any member of your family, you indicate
22 that you have not been a member, is there any member of your
23 family that has any connection with the Teamsters Union?

24 A Not to my knowledge.

25 Q Has there been any activity on behalf of the

1 Teamsters Union that has been a matter of any benefit to or
2 any detriment to you or to any member of your family?

3 A No, sir.

4 Q Do you have any sympathy for or any prejudice
5 against a person of another race that would in any way
6 influence you in the trial of this case?

7 A No, sir.

8 Q Do you feel that each person irrespective of race
9 is entitled to equal treatment before the law?

10 A Yes, sir.

11 Q To what extent, if any, have you read or heard
12 publicity about this case?

13 A Very little.

14 Q What sort, what source of publicity do you think
15 you may have read or heard?

16 A Well, I might have read a little along back, but
17 I don't even remember it. I remember one thing about the
18 shooting, or something they had, that is the only thing I
19 even remember.

20 Q Well, is that information or any other informa-
21 tion that you may have read or heard, is that such as to
22 cause you to form any opinion about this lawsuit?

23 A No, sir.

24 Q Or any party to this lawsuit?

25 A No, sir.

1 Q Is there anything that you have read or heard
2 that would cause you to be either prejudiced against or in
3 sympathy for any party to this lawsuit either the prosecution
4 on the one hand or any one of the defendants on the other hand?

5 A No, sir.

6 Q Did you in any way request or seek to be selected
7 upon this jury?

8 A No, sir.

9 Q Has anyone talked with you or in any way com-
10 municated with you about this case or about your serving upon
11 the jury in this case in a manner that would seek to influence
12 you in any way in serving upon the jury?

TK 8 End 13
TK 8A fls

A No, sir.

14 Q Did anyone speak to you about jury service or
15 possible jury service before you were subpoenaed in this
16 case?

17 A No, sir.

18 Q Are you subject to any pressures or any influences
19 from any source that might prevent you from rendering fair
20 and impartial verdict based only on the evidence in this case
21 that you will hear in open court if selected and the instruc-
22 tions of the Court?

23 A No, sir.

24 Q Do you have any prejudice against or sympathy for
25 any other persons merely because he may reside in another

1 portion of the United States from where you reside?

2 A No, sir.

3 Q Since you have been here under subpoena, have you
4 had or received any information or had any experience that
5 would cause you to be prejudiced against or in sympathy for
6 any party?

7 A No, sir.

8 Q Or that would influence you in any way against
9 deciding this case fairly and impartially?

10 A No, sir.

11 Q If selected do you feel that you could give both
12 the government and the defendants in the case a fair and
13 impartial trial?

14 A Yes, sir.

15 Q Would you be willing to judge each witness upon
16 his individual merit giving no preference to his testimony
17 nor discounting his testimony merely because he was produced
18 or put on the witness stand by one side or by the other side
19 in the lawsuit? In other words, would you judge each witness
20 individually in forming your opinion as to the credibility
21 that he should be given?

22 A Yes, sir.

23 Q Would you be willing to judge each witness on his
24 individual merit irrespective of whether he was a law enforce-
25 ment officer on the one hand or whether he was of some other

1 occupation or profession or calling on the other hand?

2 A Yes, sir.

3 Q What organizations are you a member of?

TK 8A End
TK 9 fls

4 A I am a member of the Church of Christ.

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1 THE COURT: What was the number of the first
2 gentleman I talked with?

3 MR. DALE: 155, Your Honor.

4 THE COURT: 155?

5 MR. DALE: 155, Morrison.

6 THE COURT: Marshall Stewart.

7 MR. STEWART: Here, sir.

8 THE COURT: Which is Mr. Stewart?

9 (Venireman Stewart held up his hand.)

10 MARSHALL T. H. STEWART,

11 a venireman, having been first duly sworn, was examined and
12 answered as follows:

13 EXAMINATION BY THE COURT:

14 Q All right. Just keep your seat. I notice you have
15 the initials T. H. What are those initials for, Mr. Stewart?

16 A Thomas Hayden.

17 Q Mr. Stewart, if you will, speak out loudly enough
18 so all of the gentlemen in the courtroom can hear you.

19 You live on Bennett Road. What portion of the
20 county or of Chattanooga is that?

21 A That is East Ridge near the new East Ridge high
22 school.

23 Q What family do you have, Mr. Stewart?

24 A I have a daughter and a son.

25 Q And what ages are they?

- 1 A The daughter is 24 and the son is 20.
- 2 Q Are either of them still living at home?
- 3 A The son is at home, the daughter is married.
- 4 Q I notice that you list your occupation as a
- 5 machinest. Could you tell us more exactly what you do, Mr.
- 6 Stewart.
- 7 A At the present time I am operating a boring mill
- 8 for Lockheed Georgia Aircraft, that's at Marietta, Georgia.
- 9 Q Marietta?
- 10 A Yes, sir.
- 11 Q Do you communicate back and forth there?
- 12 A No, sir, I stay down there five days and six days
- 13 a week, whatever I work, and then come home on the week end.
- 14 Q I see. How long have you been so employed?
- 15 A Since October 28th. I am fairly a new employee
- 16 in that company.
- 17 Q I see. Before that employment, what employment
- 18 did you have?
- 19 A I was with Gaither Machine Works on 23rd Street
- 20 here in Chattanooga.
- 21 Q How long were you with that company?
- 22 A Oh, altogether about a couple of years I guess.
- 23 Q And before that what employment?
- 24 A I was with Gladish, Gladish Machine Company about
- 25 a year and a half and before that I was with Crane Company

1 A The daughter is 24 and the son is 20.

2 Q Are either of them still living at home?

3 A The son is at home, the daughter is married.

4 Q I notice that you list your occupation as a
5 machinest. Could you tell us more exactly what you do, Mr.
6 Stewart.

7 A At the present time I am operating a boring mill
8 for Lockheed Georgia Aircraft, that's at Marietta, Georgia.

9 Q Marietta?

10 A Yes, sir.

11 Q Do you communicate back and forth there?

12 A No, sir, I stay down there five days and six days
13 a week, whatever I work, and then come home on the week end.

14 Q I see. How long have you been so employed?

15 A Since October 28th. I am fairly a new employee
16 in that company.

17 Q I see. Before that employment, what employment
18 did you have?

19 A I was with Gaither Machine Works on 23rd Street
20 here in Chattanooga.

21 Q How long were you with that company?

22 A Oh, altogether about a couple of years I guess.

23 Q And before that what employment?

24 A I was with Gladish, Gladish Machine Company about
25 a year and a half and before that I was with Crane Company

1 fifteen years.

2 Q Where were you raised?

3 A In Middle Tennessee, Moore County and Franklin
4 County.

5 Q Is that where you went to school?

6 A Yes, sir.

7 Q Your wife I see is employed at the Diagnostic
8 Center here in Chattanooga.

9 A Yes, s ir.

10 Q She is a receptionist there?

11 A Yes, sir.

12 Q Are you in any way connected with the United
13 States Government?

14 A Sir, the only connection I would have is that
15 the company I work for, I understand their contracts are
16 mostly government contracts, that is the only connection that
17 I would have.

18 Q I see. Have you ever been employed by the United
19 States Government?

20 A No, sir, I haven't.

21 Q Is there any member of your family who is employed
22 by or has been employed by the United State s Government?

23 A None other than being in the military service is
24 all that I can recall.

25 Q And which member of your family has been in the

1 service?

2 A Well, I have a brother in the service and I have
3 one retired from the service.

4 Q Have you had any difficulty with the United States
5 Government or any problems with the United States Government
6 that would in any way influence you in the trial of this case?

7 A No, sir, I haven't.

8 Q Anything in your dealings with the United States
9 Government that would cause you to have any prejudice against
10 the prosecution in this case or sympathy for the prosecution?

11 A No, sir.

12 Q Anything in such relationship that might cause
13 you to have any prejudice against any defendant in this
14 case or any sympathy for any defendant in this case?

15 A No, sir.

16 Q Have you had any litigation or any lawsuits in
17 which you have been a party or have been a witness to?

18 A No, sir.

19 Q Do you have any such litigation pending now?

20 A No, sir.

21 Q Any immediate member of your family who has had
22 any such litigation?

23 A No, sir.

24 Q Have you had previous jury service?

25 A Yes, sir, I have.

1 Q Where was that?

2 A In the Hamilton County Criminal Court.

3 Q More than one time?

4 A Yes, sir, more than one time.

5 Q You list one time in 1962. Did you have some
6 previous service before that?

7 A The last service I had was this coming February,
8 been about two years ago, I believe, I believe it was two
9 years ago in the Hamilton County Court and then before that
10 it would date back to, oh, possibly fifteen or sixteen years
11 ago.

12 Q Was there anything about that experience that
13 would cause you to have any sympathy for or any prejudice
14 against either side in this lawsuit or against any party in
15 this lawsuit?

16 A No, sir.

17 Q Are you a member of any labor organization?

18 A No, sir.

19 Q Have you been a member of any labor organization?

20 A I was a member of the United Mine Workers for
21 several years while I was at Crane Company.

22 Q I see. Is there anything in that experience
23 that would cause you to have any sympathy for or any prejudice
24 against any party to this lawsuit or either side to this
25 lawsuit?

1 A No, sir.

2 Q Has any member of your family--, well, first,
3 have you ever had any connection with the Teamsters Union?

4 A No, sir, I haven't.

5 Q Any member of your family who has had?

6 A (Moves head from side to side.)

7 Q Have you ever received any benefits from or
8 suffered any detriments from any activity of the Teamsters
9 Union?

10 A No, sir.

11 Q Do you have any prejudice against or any sympathy
12 for a person of another race that would influence your
13 serving as a juror in any way?

14 A No, sir.

15 Q Do you feel that all people irrespective of race,
16 are entitled to be treated equally before the law?

17 A Absolutely.

18 Q Mr. Stewart, have you read or heard anything
19 about this lawsuit or the subject matter of this lawsuit, and
20 if so, can you identify what you may have read or heard?

21 A This case that was tried in Nashville, I read
22 quite a bit of that but I have forgotten the most of it, I
23 don't--

24 Q (Interposing) Do you recall where you read that
25 or what publications you read?

1 A It would have been the Chattanooga Free-Press
2 paper, the paper I take.

3 Q Was there anything that you read there that
4 would in any way influence you in this case?

5 A Well, of course, I had some opinions but I don't
6 think that opinions would influence an honest man in making
7 a decision.

8 Q Well, as you sit there now do you have an opinion
9 about either the guilt or the innocence of any party to
10 this lawsuit?

11 A Well--

12 Q Not saying what that opinion is, do you feel that
13 you have any such opinion?

14 A Yes, sir, I could have.

End
Tk 9

Tk 10
follows

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1 Q Do you think that it might take some evidence to
2 be presented in the case before that you could set that
3 opinion aside and accept this case?

4 A I believe it would.

5 THE COURT: All right, I believe we will excuse
6 you, Mr. Stewart.

7 IRVIN MORRIS SHIPLEY,

8 a venireman, having first been duly sworn, was examined and
9 answered as follows:

10 EXAMINATION BY THE COURT:

11 Q Mr. Shipley, I notice that you live on Bales
12 Avenue, where is that, sir?

13 A That is in East Ridge, sir.

14 Q How long have you lived there?

15 A Approximately ten years.

16 Q What family do you have, Mr. Shipley?

17 A I have one little girl.

18 Q What age is she?

19 A She is eleven.

20 Q I notice you list your occupation as supervisor
21 at the foundry business.

22 A Yes, sir.

23 Q What are your duties in that respect?

24 A Well, I'm the inspection supervisor. It is
25 quality control more or less.

1 Q How many employees do you have under your
2 supervision?

3 A Fifteen.

4 Q How long have you held that occupation?

5 A Thirteen years.

6 Q Have you been with the same company? You list
7 your employment as Gordon Street Company, Inc. Is that
8 correct?

9 A Yes, sir.

10 Q Have you been with that company for fifteen
11 years?

12 A Thirteen years.

13 Q And what jobs have you held with the company?

14 A I started there originally in the accounting
15 department and then into supervision.

16 Q Were you raised here in Chattanooga?

17 A Yes, sir.

18 Q Did you take your schooling here?

19 A Yes, sir.

20 Q Where did you go to business college?

21 A At Edmundson.

22 Q What employment did you have or what did you do
23 before you went to work with Gordon Street Company?

24 A That was about it, sir. I was in the service
25 and I worked at Barrow-Agee laboratories. It is a testing

1 laboratory.

2 Q Speak out just a little bit more loudly, Mr.

3 Shipley, so everyone can hear you, please.

4 A All right, sir.

5 Q Mr. Shipley, have you ever been employed by the

6 United States Government?

7 A Yes, sir.

8 Q In what capacity?

9 A I was extra mail carrier here during Christmas

10 rush.

11 Q And when was that?

12 A It has been several years, sir. I would say

13 about fifteen years ago.

14 Q About fifteen years ago?

15 A Yes, sir.

16 Q You indicated that you had had military service,

17 which branch of the service were you in?

18 A In the Navy.

19 Q And when was that?

20 A That was in 1946 to 1948.

21 Q Was there anything in that experience that would

22 cause you to have any sympathy for or any prejudice to any

23 party in this lawsuit if he were an officer in the military

24 services at one time?

25 A No, sir.

1 Q Does any member of your family, is any member of
2 your family employed by the United States Government?

3 A Not now, sir. My father is a retired postal
4 clerk.

5 Q Where was he employed?

6 A He was employed here.

7 Q In Chattanooga?

8 A Yes, sir.

9 Q And when did he retire?

10 A He has been retired about four years.

11 Q Have you ever had any problems with the United
12 States Government that would cause you to have any sympathy
13 for or any prejudice against the prosecution in this case?

14 A No, sir.

15 Q Have you ever had any relationship with the United
16 States Government that would cause you to have any prejudice
17 against or any sympathy for any defendant in this case?

18 A No, sir.

19 Q Do you now have or have you had any litigation or
20 lawsuits in which you were a witness or in which you were a
21 party?

22 A Nothing other than a witness in an accident, auto
23 accident.

24 Q And when was that?

25 A That has been approximately four years ago.

- 1 Q Was that here in Hamilton County?
- 2 A Yes, sir.
- 3 Q In one of the state courts?
- 4 A In the County Court, yes.
- 5 Q Have you had any previous jury service?
- 6 A Yes, sir.
- 7 Q You list on your report that you had service
- 8 about four years ago here in Hamilton County. Is that correct?
- 9 A Yes, sir.
- 10 Q Is that the only previous service you have had?
- 11 A Yes, s ir.
- 12 Q Did you serve on civil cases or criminal cases or
- 13 both?
- 14 A Civil cases only.
- 15 Q Was there anything in that experience that would
- 16 cause you to have any sympathy for or any prejudice against
- 17 either side in this lawsuit or any party in this lawsuit?
- 18 A No, sir.
- 19 Q Are you a member of any labor organization?
- 20 A No, sir.
- 21 Q Have you been a member of any labor organization?
- 22 A No, sir.
- 23 Q Any immediate member of your family who is a
- 24 member of any labor organization to your knowledge?
- 25 A No, sir.

1 Q Have you received any benefit from or suffered
2 any detriment from any activity by the Teamsters Union?

3 A No, sir.

4 Q Do you have any sympathy for or any prejudice
5 against a person of another race from yourself?

6 A No, sir.

7 Q Do you feel that everyone irrespective of race
8 is entitled to equal treatment before the law?

9 A Yes, sir.

10 Q And in a court of justice.

11 A Yes, sir.

12 Q And would you give everyone such equal treatment?

13 A I would.

14 Q Have you read or heard any publicity about this
15 lawsuit and if so to what extent and what was the source of
16 such publicity?

17 A The accounts in the local newspapers is all, sir.

18 Q And over what period of time have you been
19 aware of those?

20 A The time that I got this summons until last
21 Monday.

22 Q You received your summons around the 10th or
23 11th of this month. Is that correct?

24 A Yes, sir.

25 Q Well, from what you have heard and from what you

1 have read did that cause you to form any opinion about the
2 guilt or innocence of any party to this lawsuit?

3 A No, sir.

4 Q Has that influenced you in any way either in favor
5 of or against either side in this lawsuit?

6 A No, sir.

7 Q And what paper or papers did you read that?

8 A It was the News Free Press.

9 Q Did you in any way request or seek selection
10 upon this jury?

11 A No, sir.

12 Q Has anyone talked with you or first let me ask
13 you this, from what you have read or what you may have heard,
14 has it caused you to form any opinion about the guilt or
15 innocence of any party in this lawsuit?

16 A No, sir, I have no opinion.

17 Q Has anyone talked with you or in any way
18 communicated with you about this case or about your serving
19 as a juror in this case in a manner that would seek to
20 influence you in any way in serving upon the jury?

21 A No, sir. Only in a trivial way. I mean, inquiring
22 had I been accepted or rejected or what.

23 Q Anyone ever mention any opinion to you about the
24 lawsuit or about the guilt or innocence of any party in the
25 lawsuit?

1 A No, sir.

2 Q Anything in any of those contacts that would in
3 any way influence you in performing your duties here if you
4 should be selected as a juror?

5 A No, sir.

6 Q Did anyone speak to you about possible jury service
7 before you were subpoenaed for jury service here?

8 A No, sir.

9 Q Are you subject to any pressures or any influences
10 from any source that might prevent you from rendering a fair
11 and impartial verdict based upon the evidence and the law
12 that is given to you by the Court?

13 A No, sir.

14 Q Would you have any prejudice against or sympathy
15 for any person or any attorney merely because he was a
16 resident of another state than the state in which you reside?

17 A No, sir.

18 Q Since you have been here under subpoena, have
19 you heard anything or have you had any experience that would
20 cause you to be anything other than impartial in this case?

21 A No, sir.

22 Q Would you be willing to judge each witness on his
23 individual merit giving no preference to any witness merely
24 because he was called by one side or called by the other side
25 in the case?

1 A Yes, sir.

2 Q Would you be willing to judge each witness on his
3 individual merit irrespective of whether he was a law
4 enforcement officer on the one hand or whether he was of
5 some other calling or occupation on the other hand?

6 A Yes, sir.

7 Q What organizations are you a member of?

8 A The American Foundrymen Society. And the St.
9 Andrews Methodist Church.

10 Q As you sit there now, do you know of any reason
11 why you couldn't serve upon this jury and give both the
12 government and each defendant in the case a fair and impartial
13 trial deciding the case solely on the evidence that you hear
14 in open court and the instructions of the court?

15 A No, sir.

End
Tk 10

Tk 11
follows

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1 THE COURT: Mr. Kilgore, which one is Mr. Kilgore?

2 (Venireman Kilgore raised his hand.)

3 JOHN A. KILGORE,

4 a venireman, having been first duly sworn, was examined and
5 answered as follows:

6 EXAMINATION BY THE COURT:

7 Q Mr. Kilgore, you live at Hixson, Tennessee?

8 A That is right.

9 Q How long have you lived in that area?

10 A Four year.

11 Q And before that where did you live?

12 A East Ridge.

13 Q You were raised, I see, in Alabama?

14 A That is right.

15 Q How long did you live in Alabama?

16 A Until I was sixteen years old, I left there when
17 I was sixteen.

18 Q And do you have a family?

19 A I have one stepdaughter and two children of my
20 own.

21 Q All right.

22 A And my wife.

23 Q Where did you take your education?

24 A I went to school in Alabama, DeKalb County,
25 Alabama.

1 Q Alabama. You list your occupation as an
2 electrician with DuPont nylon plant here in Chattanooga. What
3 sort of work do you do there at the plant?

4 A Well, at the present time I am helping to
5 install new equipment or modifications to equipment that we
6 have.

7 Q How long have you been employed with DuPont?

8 A Fifteen year.

9 Q And before that employment what did you do?

10 A Combustion Engineering, a welder's helper.

11 Q And before that?

12 A The same job at Samuel Stamping and Enameling
13 Company.

14 Q And before that?

15 A Army for a year and a half or so.

16 Q All right. Is your wife employed?

17 A At Signal Mill as a seamstress or a machine
18 operator.

19 Q Do you have any connection with the United States
20 Government, have you been employed by the United States
21 Government other than your military service?

22 A No, sir.

23 Q Was there anything in your military service that
24 would have caused you to have any sympathy for or any pre-
25 judice against any party in this lawsuit?

1 A No.

2 Q If a defendant in this lawsuit was an officer in
3 one of the military services during the war, would that cause
4 you to have any sympathy for or prejudice against him or
5 in any way influence you in deciding this case other than
6 impartially?

7 A No.

8 Q Have you had any difficulty or problem with the
9 United States Government that would cause you to in any way
10 be prejudiced against or in sympathy with the prosecution in
11 this case?

12 A No, sir.

13 Q Has any such relationship that would cause you to
14 either be in sympathy or prejudiced against any defendant in
15 this case?

16 A No.

17 Q Do you have any litigation pending at this time
18 or have you been a party to or a witness to any lawsuit?

19 A None.

20 Q Have you had previous jury service?

21 A Yes.

22 Q When was that, Mr. Kilgore?

23 A It has been around three -- a little over three
24 year, I believe.

25 Q Did you serve more than one time?

1 A No.

2 Q Did you try civil cases or criminal cases or
3 both?

4 A Civil, maybe one of each. If I was on a criminal
5 it was very short, but I believe I was, but I am not too sure.

6 Q Was there anything in that experience that would
7 cause you to have any sympathy for or any prejudice against
8 either side in this lawsuit or any party in this lawsuit?

9 A No.

10 Q Are you a member of any labor organization or
11 have you been a member of any labor organization?

12 A I am not at the present time. At the present
13 time I am not. I have been a member of the International
14 Stove Mounters Union back around 1944, sometime back there,
15 and also the independent union that has been mentioned here
16 before this morning out at DuPont. I have been a member of
17 it.

18 Q Have you had any experience in connection with
19 the union activities that would cause you to be -- that would
20 in any way cause you to be in sympathy or prejudiced against
21 any party to this lawsuit or in any way prevent you from
22 trying this case fairly and impartially?

23 A No, sir.

24 Q Have you or has any member of your family ever
25 had any connection with the Teamsters Union?

1 A No.

2 Q Has the Teamsters Union ever engaged in any
3 activity in which you have either received a benefit or
4 suffered a detriment that would in any way influence your
5 participation on this jury?

6 A No.

7 Q Do you have any feeling toward a person of
8 another race that would in any way interfere with your serving
9 impartially on the case?

TK 11 End 10
TK 11A fls

10 A No, I don't.

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1 Q Do you feel that every person, irrespective of
2 race, is entitled to be treated equally before the law?

3 A I do.

4 Q To what extent, if any, have you read anything
5 about this case or heard anything about the case and tell us
6 about the possible source of that information.

7 A Well, I have read the Free Press most all of the
8 time, I don't remember any details about the case at all
9 except I do recall that it was that they were going to have
10 one here in Chattanooga, I don't remember any details about
11 it.

12 Q All right. Is there anything that you have read
13 or heard that has caused you to form any opinion as to the
14 guilt or innocence of any party in this lawsuit?

15 A No, sir.

16 Q Anything that you have read or heard that would
17 in any way interfere with your--if you were selected as a
18 juror starting out on this case with an open mind and trying
19 the case solely on the basis of the evidence that you hear
20 here in open court?

21 A (Moves head from side to side.)

22 Q Did you in any way request or seek to be selected
23 for jury service on this jury?

24 A No, sir.

25 Q Has anyone talked with you or in any way communicated

1 with you about this case or about your serving as a juror
2 in this case in a manner that would seek to influence you
3 or in any way upon serving as a juror in this case?

4 A No other than just casual mention of the fact
5 that they, like the rest of the folks, that they had seen my
6 name in the papers.

7 Q I see. Did anyone express an opinion about the
8 guilt or innocence of the parties to you?

9 A No, sir.

10 Q Have you expressed an opinion about the guilt
11 or innocence of any party to this lawsuit to anyone?

12 A No.

13 Q Has anyone, did anyone speak to you about
14 possible jury service before you received a subpoena to
15 report for jury duty?

16 A No.

17 Q Are you subject to any pressures or any influences
18 from any source that might prevent you from rendering a fair
19 and impartial verdict based upon the evidence and upon the
20 law as given by the Court?

21 A No.

22 Q Would you have any prejudice against or any
23 sympathy for any other person or any other party or any
24 other attorney merely because he came from another state?

25 A No.

1 Q Since you have been here for jury service have
2 you had any experience or have you received any information
3 that would in any way prevent you from being impartial in
4 the case?

5 A No.

6 Q Would you be willing to judge each witness upon
7 his individual merit, giving no preference to or not dis-
8 counting testimony either merely because he was put on the
9 witness stand by one side or by the other side of the lawsuit?

10 Do you understand my question?

11 A I don't believe I did.

12 Q Would you be willing to judge each witness and
13 determine the credibility that you think should be given to
14 his testimony on an individual basis, irrespective of whether
15 he was called to the witness stand by one party or by another
16 party?

17 A No.

18 Q Well, I am not sure--do you understand my question?
19 I am asking you, suppose that a witness were called in the
20 case by one side or suppose that he was called by another
21 side in the lawsuit, would you give--would you judge his
22 testimony on the basis of what he said and how he appeared
23 individually, irrespective of who might have called him and
24 asked him to be on the witness stand?

A Yes.

1 Q The mere fact that a witness might be a law
2 enforcement officer on the one hand or might be of some
3 other occupation, do you feel that you could judge his
4 testimony on its individual merit irrespective of his occu-
5 pation?

6 A Yes, sir.

7 Q What organizations are you a member of, Mr.
8 Kilgore?

9 A Baptist Church.

10 Q Do you know of any reason as you sit there now
11 why you could not, if selected, sit upon this jury and give
12 a fair trial to both sides, be fair to the government and
13 be fair to each of the defendants, try this case impartially?

14 A I don't know any.

15 THE COURT: William Gordon Darnell.

16 MR. BERKE: He was excused, your Honor.

17 THE COURT: He is the one that was excused?

18 MR. BERKE: Yes, sir.

19 HARRY WINSTON TYLER,

20 a venireman, having been first duly sworn, was examined and
21 answered as follows:

22 EXAMINATION BY THE COURT:

23 Q Mr. Tyler, do you live here in Chattanooga?

24 A Yes, sir.

25 Q How long have you lived in Chattanooga?

1 A Since 1936. Off and on since 1936, sir. I came
2 to Chattanooga then.

3 Q Have you had any employment with the United
4 States Government other than through the Tennessee Valley
5 Authority?

6 A No, sir.

7 Q Is there anything in your experience with the
8 government that would cause you to have any sympathy for or
9 any prejudice against the prosecution in this lawsuit?

10 A No, sir, I wouldn't think so.

11 Q Is there anything in your experience with the
12 United States Government that would cause you to have any
13 sympathy for or any prejudice against either one of the
14 defendants in this lawsuit?

15 A No, sir.

16 Q Do you now have or have you had any litigation
17 in which you were a party to or in any way which you were
18 a witness?

19 A No, sir.

20 Q Any member of your family that has?

21 A No, sir.

22 Q You've had previous jury service. You had jury
23 service in the federal court in 1958?

24 A Approximately. I don't remember the exact date.

25 Q And you've been in the state court, you say,

1 several times?

2 A Yes, sir.

3 Q When was the last time you served on the jury?

4 A The last time I was in federal court. In the
5 state court it was about 1956 or 1957.

6 Q Was there anything in that experience either in
7 the state court or the federal court that would cause you to
8 have any sympathy for or any prejudice against either side
9 of this lawsuit?

10 A No, sir.

11 Q Or any prejudice for or against or any sympathy
12 for any defendant in this lawsuit?

13 A No, sir.

14 Q Are you now a member of any labor organization
15 or have you been a member of any labor organization?

16 A No, sir, I am not a member. I have never been
17 a member of a labor organization.

18 Q Any member of your family who is a member of a
19 labor organization?

20 A Immediate family, wife?

21 Q Yes, sir.

22 A No, sir.

23 Q Any member of your family who has been a member
24 of the Teamsters Union?

25 A No, sir.

1 Q Have you ever suffered any detriment by or any
2 benefit from any union activity or more specifically any
3 activity by the Teamsters Union?

4 A I have not.

5 Q Is there anything in the activity of any union
6 or anything in the activity of the Teamsters Union that
7 would in any way cause you to have any sympathy for or any
8 prejudice against in this case?

9 A No, sir.

10 Q On the matters that are on trial?

11 A No, sir. None.

12 Q Do you have any feeling toward any person of
13 another race that would cause you to do anything other than
14 be fair and impartial in considering his case?

15 A No, sir.

16 Q Do you feel that every person irrespective of
17 race is entitled to be treated equally in a court of justice?

18 A I do.

19 Q Have you read or heard any publicity or news
20 accounts of this lawsuit, if so, to what extent and from
21 what source?

22 A Well, I read the news accounts in the two local
23 papers. I subscribe to The Chattanooga Times. And I have
24 heard telecasts accounts.

25 Q From what you have read or from what you have

1 heard has it caused you to form any opinion as to the guilt
2 or innocence of any defendant in this lawsuit?

3 A No, sir.

4 Q Did you in any way request or seek to be selected
5 upon the jury in the case?

6 A No, sir.

7 Q Has anyone talked with you or in any way com-
8 municated with you about this case or about your serving as
9 a juror in this case in a manner that would seek to influence
10 you in any way in serving upon the jury?

11 A No, sir.

12 Q Did anyone speak to you about possible jury
13 service before you were summoned for jury--before you re-
14 ceived your subpoena for jury duty in this case?

15 A No, sir.

16 Q Are you subject to any pressures or to any
17 influences from any source that might prevent you from
18 rendering a fair and impartial verdict based upon the evi-
19 dence and the law?

20 A No, sir.

21 Q Do you have any prejudice against or sympathy
22 for any person or any party or any attorney merely because
23 he came from another state or another section of the United
24 States?

25 A No, sir.

1 Q Since you've been here in court this time, and
2 under subpoena, have you had any experience or have you heard
3 anything or seen anything that would in any way influence
4 you to be prejudiced against or in sympathy for any party to
5 this lawsuit?

6 A No, sir.

7 Q Would you be willing to judge each witness on his
8 individual merit irrespective of who might put him on the
9 witness stand?

10 A I would.

11 Q Would you be willing to judge each witness on
12 his individual merit irrespective of whether or what his
13 occupation was or whether he was a law enforcement officer
14 on the one side or some other occupation or calling on the
15 other?

16 A Yes, sir.

17 Q What organizations are you a member of, Mr.
18 Tyler?

19 A I belong to the A. M. D. Church. I am a member
20 of the Chattanooga YMCA. I serve as chairman of the Henry
21 Branch YMCA. I am a member of the Adult Education Council,
22 a member of the Chattanooga Council for Community Forces.

1 Q Do you know of any reason as you sit there why
2 you could not be selected and sit upon this case and be fair
3 and impartial to both the government and to the defendants
4 and try this case impartially, giving equal justice to all
5 parties in the case in accordance with the law and the
6 evidence in the case?

7 A I know of none.

8 CHARLES A. McCAMPBELL,

9 a venireman, having been first duly sworn, was examined and
10 answered as follows:

11 EXAMINATION BY THE COURT:

12 Q Mr. McCampbell, Power --

13 A (Interposing) Harwood Drive.

14 Q Harwood Drive, isn't it?

15 A Yes.

16 Q What part of Chattanooga is it?

17 A Red Bank.

18 Q You were raised down in Bridgeport, is that
19 correct?

20 A Yes, sir.

21 Q How long have you been here in Chattanooga?

22 A About seven years.

23 Q Did you spend the rest of your life in Alabama?

24 A Well, not necessarily. Most of it I spent, of
25 course, I went to school in Kentucky and I worked a couple of

McC Campbell

1 years in West Palm Beach for my uncle, he had a furniture
2 store down there, and then I was in service for twenty-seven
3 months and then I worked a couple of years at Quaker Oats.

4 Q Where?

5 A With Quaker Oats. I was working out of the
6 Chattanooga territory, I was a route salesman.

7 Q Speak up a little bit more; will you try not to
8 have quite so much noise in the courtroom.

9 A I was working as a route salesman for Quaker Oats
10 Company, working out of the Memphis office, and I had
11 seventeen counties around Chattanooga that I covered. I
12 worked there for about two years and then I went back to
13 Bridgeport and stayed for about seven years.

14 Q What family do you have?

15 A Wife and one daughter.

16 Q You are now employed with the Tennessee Hospital
17 Service Association, that is, Blue Cross?

18 A Yes, sir.

19 Q And your job is listed as an accounts coordinator.
20 Could you explain that to us?

21 A I have charge of the billing and collecting of
22 the premiums, both for individual subscribers and groups.

23 Q How long have you held employment with the Blue
24 Cross?

25 A Be eight years this March.

1 Q Has that employment all been in that same position?

2 A No, I was hired as a supervisor of the direct
3 pay department and I worked there for about six months and
4 took this job.

5 Q Has all of your employment been here at Chatta-
6 nooga with the Blue Cross?

7 A Yes, sir.

8 Q Have you ever been employed by the United States
9 Government?

10 A I worked part time when I was in Bridgeport
11 as a postal clerk, part-time employee.

12 Q And when was it you mentioned having military
13 service?

14 A Between 1943, I was discharged in 1946.

15 Q Anything about that military service that would
16 cause you to have any sympathy for or prejudice against a
17 party to the lawsuit that might have been an officer in the
18 military service?

19 A No, sir.

20 Q Have you had any other member of your family that
21 is employed by the United States Government?

22 A No, sir.

23 Q Have you had any problems with the United States
24 Government that would cause you in any way to be prejudiced
25 against or in sympathy of the prosecution in this case?

1 A No, sir.

2 Q Have you had any such experience that would
3 cause you to be in sympathy of or prejudiced against any
4 defendant in the case?

5 A No, sir.

6 Q Do you know of or have you had any litigation or
7 lawsuits in which you were a party or a witness?

8 A Not now, no, sir.

9 Q Well, have you had in times past?

10 A No. I had one -- I might have one coming up,
11 I am not sure.

12 Q I see. What did it arise out of, an accident or
13 something?

14 A No. A person cut some of our timber, we are in
15 the process of deciding whether to sue him or not.

16 Q I see.

17 A But it hasn't come to court.

18 Q Are you a member of any labor organization or
19 have you ever been a member of a labor organization?

20 A No, sir.

21 Q Do you have any sympathy for or prejudice against
22 unions that would in any way prevent you from being fair and
23 impartial to each of the defendants in this case?

24 A No, sir.

25 Q Have you suffered any detriment from or received

1 any benefit from any activity by the Teamsters Union?

2 A No, sir.

3 Q That would influence you in this case?

4 A No, sir.

5 Q Do you have any prejudice against or sympathy
6 for a person of another race that would influence you in the
7 trial of this lawsuit?

8 A No, sir.

9 Q Do you believe that all people are entitled to
10 be treated equally before the law?

11 A Yes, sir.

12 Q To what extent, if any, have you read any
13 publicity or heard any accounts of this trial, from what
14 source?

15 A I read the morning paper and the News-Free Press
16 and I usually listen to the news on TV and usually listen to
17 the radio of a morning while I am shaving.

18 Q From what you have heard or from what you may
19 have read from these various sources, has that caused you to
20 form any opinion about the guilt or innocence of any party
21 to this lawsuit?

22 A No, sir.

23 Q Did you in any way request or seek to be selected
24 upon this jury?

25 A No, sir.

1 Q Has anyone talked with you or in any manner
2 communicated with you about this case or about your serving
3 as a juror in this case in a manner that would seek to
4 influence you in any way in serving upon the jury?

5 A No.

6 Q Did anyone speak to you about jury service or
7 possible jury service before you were subpoenaed in this case?

8 A No, sir.

9 Q Are you subject to any pressure or any influences
10 from any source that might prevent you from rendering a
11 fair and impartial verdict if you were selected to try this
12 case?

13 A No, sir.

14 Q Do you have any prejudice against any person or
15 any attorney merely because he comes from another section of
16 the United States?

17 A No, sir.

18 Q Since you have been here as a juror, have you
19 had any experience or have you read or heard or seen any-
20 thing that would cause you to have any prejudice against or
21 any sympathy for the prosecution or any prejudice against or
22 sympathy for the defense in the case?

23 A No.

24 Q Would you be willing to judge each witness on his
25 individual merit, irrespective of who might have put him on

1 the witness stand?

2 A Yes, sir.

3 Q Would you judge each individual witness on his
4 individual merit, irrespective of what his occupation was,
5 whether he was a law enforcement officer on the one hand or
6 some other occupation on the other?

7 A Yes, sir.

8 Q What organizations are you a member of, Mr.
9 McCampbell?

10 A Red Bank Baptist Church.

11 Q Do you know of any reason as you sit there why
12 you might not be able to sit upon this case if selected to
13 try it and be fair and impartial to both sides in the lawsuit,
14 try the case solely on the evidence in the case and decide it
15 strictly in accordance with the instructions of the Court?

16 A No, sir.

17 Q With regard to the law. All right, Mr. Link.

18 MR. NEAL: May it please the Court --

19 THE COURT: (Interposing) Time for a recess?

20 All right. Let's take about a ten-minute recess.

21 Ladies and gentlemen, do not talk to anybody
22 during this recess about the case or about your jury service.

(Thereupon, a recess was had.)

TV 3 End 23

TK 14 fls 24

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1 (Thereupon, after recess, in the absence of the
2 venire, the following proceedings were had to-wit:)

3 THE COURT: All right, Mr. Branstetter.

4 MR. BRANSTETTER: May it please the Court, upon
5 yesterday we handed up several defense, defense counsel
6 handed up to the Court some questions that we requested that
7 be asked and I do not know whether those questions were made
8 a part of the record or not. If they were not, I would like
9 those questions to be made a part of the record.

10 THE COURT: Yes. Yes. They have not been, but
11 they should be made a part of the record.

12 MR. BRANSTETTER: We should like to request that
13 all questions submitted on yesterday be made a part of the
14 record.

15 THE COURT: Yes, sir.

16 MR. BRANSTETTER: In addition to that, may it
17 please the Court, there is something that I think is very
18 basic representing one of the defendants that is not being
19 done at this point. In criminal cases it has been my
20 experience that the Court makes basic inquiries of the jurors
21 individually or collectively with reference to the presumption
22 of innocence, burden of proof, the lack of it, the fact that
23 the indictment has no significance attached to it other than
24 to get the matter before the Court. We think very specifically
25 that the method being used by the Court partakes more of a

1 civil lawsuit rather than a criminal lawsuit and we respect-
2 fully request that the Court should submit to the jury in
3 the beginning very specifically those matters dealing with
4 the presumption of innocence and as to whether or not they
5 accept this.

6 The fact that the Court states and I might suggest
7 it this way, that asks, each juror or collectively, if they
8 would follow the law, or may it please the Court, if they do
9 that you need to ask them no further questions.

10 I would suggest that means nothing because there
11 would be no use of further voir dire if they followed all
12 the laws.

13 THE COURT: All right. All right, sir.

14 MR. SCHIFFER: The defendant Parks joins in.

15 THE COURT: Yes.

16 MR. SILETS: I think it is standing that--

17 THE COURT: All defendants may join in the request
18 and the motion.

19 MR. SILETS: In addition to the comments of Mr.
20 Branstetter, I do wish if the Court would, inquire if the
21 fact that all these defendants are jointly charged makes any
22 difference. I notice the Court has been referring to the fact
23 or thought that the jury should keep each witness individually.
24 But there has been no comment about the fact of keeping the
25 defendants individually.

1 THE COURT: Yes, I propose to do that and have
2 that further along in the inquiry. But if I shouldn't do it
3 or shouldn't do it in a manner that is suitable to counsel,
4 why, call that to my attention again when we have completed
5 all the voir dire.

6 MR. SILETS: Fine, sir. Now, sir, there is another
7 matter that I wish to point out at this time and to point
8 out the failing of this in a case of this notoriety and in
9 the presence of all the other jurors.

10 And that was the comment of Mr. Starnes that
11 the thing he had heard about was the "shooting".

12 Now, these jurors are all aware of course that
13 the nature of this charge in general relates to the
14 obstruction of justice. Now, nowhere anywhere in the proof
15 and the proof will never show that any part of the obstruction
16 of justice charge here relates to a shooting. That is so
17 inflammatory, so highly prejudicial that that very statement
18 itself would lead the jurors to raise in their minds thoughts
19 that nobody ever considered here. Now, if that man had
20 been sitting by himself, there wouldn't have been any problem.
21 Now, we have 12 or 13 other people who are wondering what
22 is this shooting all about? Is that what this case is, a
23 shooting?

24 And there is nothing the Court can do to perfect
25 that because if you inquire on this point is anybody going to

1 be considered about this shooting, are you going to consider
2 this at all or should you disregard, it is going to heighten
3 it, point it out to a greater degree.

4 There is nothing here that the Court can do but
5 to discharge this group. Now, I didn't want to bring this
6 up at the time the Court was making inquiry because if the
7 Court feels that perhaps the Court would desire to try to
8 perfect it, it would at that point appear to the jurors, well,
9 maybe the defense wants to suppress any discussion of this
10 shooting.

11 But in all due respect, Your Honor, I just point
12 out to you that this is such an inflammatory word, it is
13 like yelling "fire" in a crowded theatre. That word shooting
14 must of necessity conjure up some thoughts to these jurors
15 in this case.

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follows

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1 I don't know how the Court can perfect it now.
2 I ask that that panel be discharged, this group that was last
3 being inquired of.

4 THE COURT: That request should be overruled.
5 May we have the jurors?

6 MR. NEAL: May it please the Court, we just
7 wanted to bring the Court's attention that yesterday the
8 Court inquired in some general terms about whether the jurors
9 had seen the television program on which one of the defendants
10 appeared and whether that would influence them in any way.
11 It has not been done this morning.

12 THE COURT: All right. Any matters that you wish
13 to have asked that the Court fails to ask, you will have an
14 opportunity to submit that and make notes as you go along and
15 submit those questions after the Court has completed his
16 examination.

17 MR. NEAL: Your Honor, the government does object
18 to the questions suggested by Mr. Branstetter, it's covered
19 in the following instructions on charge or the question the
20 Court made. The government would also have requested instruc-
21 tion to go over it if you took them individually and that will
22 be charged, of course.

23 THE COURT: All right. May we have the panel
24 back, please?

25 (The panel referred to above returned into open

1 court and the following further proceedings were had, to-wit:)

2 THE COURT: Mr. Link, which gentleman is Mr.

3 Link?

4 (Mr. Link raised his hand.)

5 WILLIAM LINK,

6 a venireman, having been first duly sworn, was examined and
7 answered as follows:

8 EXAMINATION BY THE COURT:

9 Q Mr. Link, you live in South Pittsburg?

10 A Yes, sir.

11 Q Live on the Tennessee side of the line?

12 A Yes, sir.

13 Q How long have you lived there?

14 A All of my life.

15 Q Did you take your schooling there?

16 A Yes, sir.

17 Q What family do you have, Mr. Link?

18 A Wife and one daughter.

19 Q Your daughter at home?

20 A No, sir.

21 Q Where does she live?

22 A She lives in South Pittsburg.

23 Q I notice that you are a hardware clerk?

24 A That's right.

25 Q For T. E. Willis. Could you tell us what that

1 business is, please?

2 A Well, it's just a general hardware.

3 Q That is located there in South Pittsburg?

4 A In South Pittsburg.

5 Q And how long have you been with this company?

6 A About thirteen years.

7 Q Is this a retail business?

8 A Yes, sir.

9 Q What did you do before you went with T. E. Willis
10 Company?

11 A I was with the Home Stores.

12 Q How long were you with the Home Stores?

13 A About three-and-a-half years.

14 Q And before that -- what were you doing with the
15 Home Stores?

16 A Assistant Manager.

17 Q And before that what was your occupation?

18 A Service station operator in South Pittsburg.

19 Q In South Pittsburg?

20 A Yes.

21 Q How long did you follow that occupation?

22 A About four years.

23 Q And prior to that?

24 A In drycleaning.

25 Q And how long were you in that occupation?

1 A About nine years.

2 Q And prior to that?

3 A That I don't remember.

4 Q That was it. What, in general, are your duties
5 at the T. E. Willis Company, do you wait on customers?

6 A Yes, sir, customers, just anything to be done,
7 why, if I am there, I do it.

8 Q Any other member of your family that is employed?

9 A My wife.

10 Q Where does she work?

11 A She works for the Pittsburgh Knitting Mills in
12 South Pittsburgh.

13 Q Do you own your home there, rent property?

14 A Yes, sir.

15 Q Do you own your home or are you renting?

16 A I am paying for one.

17 Q Paying for it. All right. Mr. Link, have you
18 ever been employed by the government?

19 A No, sir.

20 Q Any members of your family that has ever been
21 employed by the government?

22 A No, sir.

23 Q Have you ever had any dealings with the govern-
24 ment that would cause you to have any prejudice against or
25 any sympathy for the prosecution in this case?

1 A No, sir.

2 Q Have you ever had any dealings with the government
3 that would cause you to have any prejudice against or any
4 sympathy for any defendant in this case?

5 A No, sir.

6 Q Do you now have or have you had any lawsuit in
7 which you were a party or in which you were a witness?

8 A No, sir.

9 Q Any member of your family that has had such a
10 lawsuit?

11 A No, sir.

12 Q Have you ever had previous jury service?

13 A One time.

14 Q When and where was that?

15 A Approximately four years ago in Marion County,
16 Jasper, Tennessee.

17 Q Did you serve on civil cases or criminal cases or
18 both?

19 A Civil cases.

20 Q Anything about that jury service that would cause
21 you to have any sympathy for or any prejudice against either
22 side in this lawsuit?

23 A No, sir.

24 Q Have you ever or are you now or have you ever
25 been a member of a labor union?

1 A No, sir.

2 Q Any member of your family who is a member of a
3 labor union?

4 A My father has been.

5 Q And what was he?

6 A He was vice president of the AF of L.

7 Q What union?

8 A Well, it went under Stove Mounters International.

9 Q Coal miners?

10 A No, no, sir, a foundry, stove foundry.

11 Q Stove foundry?

12 A Um-mmm.

13 Q I see. Is he still participating in that
14 activity?

15 A No, sir.

16 Q Is he living?

17 A No.

18 Q I see. Excuse me. Do you have any sympathy for
19 or any prejudice against unions that would in any way carry
20 over to this lawsuit or in any way affect your serving on
21 this jury?

22 A No, sir, I don't think so.

23 Q Is there any question in your mind about that?

24 A I don't think so.

25 Q Well, have you received any benefit from or

1 suffered any detriment from any union activities that would
2 in any way affect your judgment in this lawsuit?

3 A No, sir.

4 Q Do you have any connection with or does any
5 member of your family have any connection with the Teamsters
6 Union?

7 A No, sir.

8 Q Have you received any benefits from or suffered
9 any detriment from any activity on behalf of the Teamsters
10 Union?

11 A No, sir.

12 Q Do you have any prejudice against or any sympathy
13 for a person of another race than yourself that would in any
14 way enter into your deliberations in this case?

15 A No, sir.

16 Q To what extent, if any, have you read or heard
17 publicity or news accounts in regard to this case?

18 A Not much, a little in the paper and television.

19 Q What paper, what paper, sir?

20 A Chattanooga paper and I have seen the Nashville
21 Tennessean.

22 Q Do you subscribe to both of those papers?

23 A No, I have a brother that lived in Nashville
24 at the time and I would see him.

25 Q I see. Have you talked with your brother about

1 this case in any way?

2 A Well, I have, yeah, but not anything that would
3 be of any importance, sir.

4 Q Well, has he talked with you about purporting
5 to know any of the facts in the case?

6 A No.

7 Q Have you ever expressed any opinion about the
8 case or about the guilt or the innocence of any of the
9 parties in the case?

10 A No, sir.

11 Q Has your brother ever expressed any opinion to
12 you about the guilt or innocence of any party to this case?

13 A No.

14 Q From the publicity that you may have seen or
15 read, did you form any opinion about the guilt or innocence
16 of any party to this case?

17 A No, sir.

18 Q As you sit there now, do you know of any reason
19 why you would be either prejudiced for or in sympathy for any
20 party or either side of this lawsuit?

21 A No, sir.

22 Q Did you in any way request to be selected upon
23 this jury?

24 A No, sir.

25 Q Has anyone talked with you in any way or in any

V 15 - 9

• Link

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1 way communicated with you about this case or about your
2 serving as a juror in this case in a manner that would seek
3 to influence you or in any way in serving as a juror if you
4 were selected?

TK 15 End
TK 16 fls

5 A No, sir.

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1 Q Did anyone speak to you about possible jury
2 service before you were subpoenaed to report here for jury
3 service?

4 A No.

5 Q Are you subject to any kind of pressures or any
6 influences that you can think of that would in any way serve
7 to prevent you from rendering a fair and impartial verdict
8 strictly on the basis of the evidence and the law and as
9 your conscience dictates?

10 A No, sir.

11 Q Do you have any prejudice against any party or
12 another attorney because he comes from another part of the
13 United States than that in which you live?

14 A No, sir.

15 Q Since you have been here in court for jury service
16 have you had any experience or heard anything or seen any-
17 thing that would cause you to be anything other than impartial
18 should you be selected as a juror?

19 A No, sir.

20 Q Do you feel that you can judge each witness upon
21 his individual merit without regard to who might have called
22 him to the witness stand?

23 A I do.

24 Q Do you feel that you can judge each individual
25 witness on his individual merit irrespective of whether he

1 might on the one hand be a law enforcement officer or on the
2 other hand some other calling?

3 A Yes, sir.

4 Q What organizations are you a member of, Mr. Link?

5 A Cumberland Presbyterian Church in South Pittsburg.

6 Q Do you know of any reason as you sit there why
7 you might not be able if selected as a juror to sit on this
8 case, listen to the evidence, follow the instructions of the
9 Court that the Court gives you and decide this case solely
10 on that evidence and in accordance with those instructions?

11 A No, sir.

12 Q Do you know of any reason why you couldn't be
13 fair and impartial to both sides in this lawsuit, or to
14 either side or to any party?

15 A No, sir.

16 HOYLE F. ALBRITTON,

17 a venireman, having first been duly sworn, was examined and
18 answered as follows:

19 EXAMINATION BY THE COURT:

20 Q Mr. Albritton, you live at Cleveland, Tennessee?

21 A Yes, sir.

22 Q How long have you lived there?

23 A Practically all my life.

24 Q Where were you born and raised?

25 A I was born in Polk County, Hartsville, and I lived

1 at Cleveland the rest of the time.

2 Q What family do you have?

3 A I have a son and daughter and wife.

4 Q Are your children, do they live at home?

5 A No. My daughter is married and I have a son in
6 college.

7 Q You are an officer with Cleveland Builders Supply
8 Company?

9 A That's right, sir.

10 Q What is the general nature of that business? Is
11 it what the title would indicate?

12 A Building supplies. Mill work.

13 Q And just what do you do in your position with
14 the company?

15 A I'm vice president.

16 Q I know, but what sort of activity do you engage
17 in?

18 A Well, I meet customers and I figure materials.
19 Most anything to be done.

20 Q As an officer with the company, have you ever
21 had occasion to deal with or negotiate with labor unions?

22 A No, sir.

23 Q Mr. Albritton, how long have you held that position
24 and been involved in that business?

25 A Thirty years.

1 Q Have you held that same position with the company?

2 A No, sir.

3 Q What did you start out as?

4 A Well, I worked on the trucks. Delivered. Worked
5 hard.

6 Q Your wife is a housewife? She is not otherwise
7 employed?

8 A That's right.

9 Q Are you in any way connected with the United States
10 Government or have you ever been connected or employed with
11 the United States Government?

12 A I was a member of the Tennessee National Guard at
13 one time when I was a young man.

14 Q Any other member of your family that is connected
15 with the United States Government or employed by the United
16 States Government?

17 A No, sir. My son-in-law is a member of the Guard.

18 Q Is he a member of the National Guard?

19 A Yes, sir.

20 Q What does he do otherwise?

21 A He is a Sergeant, I believe.

22 Q Well, I know, but what is his occupation? He is
23 not on active duty, is he?

24 A No. No. He is with the American Uniform Company,
25 I believe.

1 Q Mr. Albritton, have you ever had any dealings
2 with the United States Government or any problem with the
3 United States Government that would cause you to have any
4 sympathy for the prosecution in this case or any prejudice
5 against the prosecution in this case?

6 A No, sir.

7 Q Have you ever had any such dealings with the
8 United States Government that would cause you to have any
9 prejudice against any defendant in this case or any sympathy
10 for any defendant in this case?

11 A No, sir.

12 Q Do you now have or have you had any lawsuits in
13 which you were a party or witness?

14 A No, sir.

15 Q Any member of your family, any member of your
16 immediate family that has had such litigation?

17 A No, sir.

18 Q Have you ever had any jury service? I notice
19 you served in Bradley County. Is that correct?

20 A That's correct.

21 Q In 1961?

22 A Yes, sir.

23 Q Was that on the trial of criminal cases?

24 A Criminal cases, yes, sir.

25 Q Is that the only jury service you've had?

1 A Well, I served once before about eight or ten
2 years ago.

3 Q And where was that service?

4 A Right in the same county, Bradley County. Circuit
5 Court I believe.

6 Q Was there anything about that jury service that
7 would cause you to have any sympathy for or any prejudice
8 for any party to this lawsuit?

9 A No, sir.

10 Q Do you have any sympathy for or any prejudice
11 against or any feeling about labor unions in general that
12 would in any way interfere or enter into your deliberations
13 in this case?

14 A No, sir.

15 Q Have you ever had any benefit from or have you
16 ever suffered any detriments from any activity of the
17 Teamsters Union?

18 A No, sir.

19 Q Do you have any feeling toward any person of
20 another race that would in any way interfere into your
21 deliberations that would enter into your deliberations if
22 you were selected as a juror?

23 A Absolutely not.

24 Q To what extent, if any, have you read any
25 publicity or heard any publicity or seen any television or

1 other matters relating to this lawsuit or relating to these
2 defendants?

3 A Oh, I have watched it. I have watched the TV
4 news and read a few articles in the paper is all.

5 Q Did you see any television broadcasts in recent
6 days in which any defendant in the lawsuit was a participant?

7 A What do you mean?

8 Q Did you see any television program in which any
9 party to the lawsuit was a participant?

10 A No, sir.

11 Q Any other juror that has?

12 MR. TYLER: I saw that.

13 THE COURT: You saw that, Mr. Tyler?

14 MR. TYLER: Yes, sir.

15 THE COURT: Was there anything from that program
16 that would cause you to either feel any sympathy for or any
17 prejudice against any party to this lawsuit?

18 MR. TYLER: No, sir.

19 THE COURT: Anything about that that would in any
20 way influence you serving as a juror in this case and trying
21 it impartially?

22 MR. TYLER: No, sir.

23 THE COURT: Likewise, would anything about this
24 in any way enter into your deliberations?

25 MR. TYLER: No, sir.

1 THE COURT: Mr. Link, was there anything about
2 this in any way that would enter into your deliberations?

3 MR. LINK: No, sir.

4 THE COURT: Anything that would in any way prevent
5 you from trying the case fairly and impartially?

6 MR. LINK: No, sir.

7 BY THE COURT:

8 Q Mr. Albritton, did you in any way request or seek
9 to be selected upon this jury?

10 A No, sir.

11 Q Since you've been subpoenaed as a juror or at
12 any time, has anyone ever talked with you in any way or
13 in any way communicated with you about the case or about
14 your serving as a juror in the case in a manner that would
15 seek to influence you in any way in serving as a juror?

16 A No, sir.

17 Q Have you ever formed or expressed an opinion to
18 anybody as to the guilt or innocence of any party to this
19 lawsuit?

20 A No, sir.

21 Q Has anyone spoken to you about possible jury
22 service in this case before you were subpoenaed for jury
23 duty?

24 A No, sir.

25 Q Are you subject to any pressures or any influences

1 from any source that you can think of that would in any way
2 prevent you from rendering conscientious verdict and being
3 fair and impartial to both sides and to all parties to this
4 lawsuit?

5 A No, sir.

6 Q Do you have any prejudice against anybody else
7 or any other attorney merely because he comes from another
8 section of the United States than in which you live?

9 A No, sir.

10 Q Since you've been here as a juror at the
11 courthouse, have you had any experience or have you received
12 or heard any information that would in any way prevent you
13 from serving impartially and fairly?

14 A No, sir.

15 Q Do you think that there is anything that caused
16 you to have any prejudice for or any sympathy for either side
17 in this lawsuit?

18 A Repeat that please.

19 Q Is there any experience that you've had since
20 you've been here, anything that you have seen or heard that
21 would cause you to feel any prejudice against or sympathy for
22 either side or any party?

23 A No, sir.

24

25

E
Tk 16

Tk 17
follows

1 Q Would you be willing to listen to each witness
2 and pass upon his testimony upon his individual merit,
3 irrespective of which side might put him on the witness
4 stand?

5 A I would.

6 Q Would the fact that a witness might on the one
7 hand be a law enforcement officer or on the other be of some
8 other occupation prevent you from weighing his testimony on
9 its individual merit?

10 A No, sir.

11 Q What organizations are you a member of?

12 A I am a member of the Methodist Church, Methodist
13 Men's Club. Well, I am a past member of the Lions Club.
14 That is about all.

15 Q All right. Do you know of any reason why if
16 you were selected in this case to sit as a juror why you
17 could not sit here and listen to the evidence, listen to the
18 instructions of the Court and then decide this case strictly
19 in accordance with those instructions as you in good con-
20 science think that it should be decided?

21 A No reason whatsoever.

22 JOHN V. ARP,

23 a venireman, having been first duly sworn, was examined and
24 answered as follows:

25 EXAMINATION BY THE COURT:

1 Q Mr. Arp?

2 A Yes, sir.

3 Q Mr. Arp, you live at Route 5, Cleveland. Where
4 is that with reference to Cleveland?

5 A That is five miles northeast of Cleveland right
6 off the Benton Pike.

7 Q How long have you lived there?

8 A I have lived at that particular address for
9 about four months, I have been in Cleveland for about 33
10 years.

11 Q Where were you raised?

12 A Polk County, Benton.

13 Q Could you tell us since you have finished school
14 what you have done, what occupations you have followed and
15 what employment you have had?

16 A I worked a while for--well, back when I got out
17 of school, why, a fellow was lucky to get any kind of a job
18 back during the depression. I worked with a building supply
19 company place there in a lumber yard and from there I've
20 been in the retail furniture store for about 25 years.

21 Q About how long?

22 A About 25 years.

23 Q You have been with the same company?

24 A No, sir, this particular company about 12 years
25 and I have worked for them on two previous occasions and I

1 was warden of the Bradley County Workhouse for four years.

2 Q You are with the Fred Hall Furniture Company?

3 A Yes, sir.

4 Q Is that a retail furniture store there in Cleve-
5 land?

6 A Retail furniture and appliance store.

7 Q Is that in Cleveland?

8 A Yes, sir.

9 Q Are you acquainted by any chance with Mr. Al-
10 britton?

11 A Yes, sir.

12 Q What is the extent of your acquaintance with
13 each other?

14 A Well, I have known him, I guess, maybe 35 years,
15 back when we used to come down from Benton to play Cleveland
16 football we played against one another in football.

17 Q Anything in that experience that would interfere
18 with you and his serving on the same jury if you were selected?

19 A Not a bit in the world.

20 Q Which side won?

21 A About a tossup, I think.

22 Q Mr. Arp, have you ever been employed by the
23 United States Government?

24 A No, sir.

25 Q Or in any way connected with it? Any member of

1 your family that has?

2 A No, sir.

3 Q You ever had any problems or difficulty with the
4 United States Government that would cause you to blame the
5 prosecution or in any way feel any prejudice toward the pro-
6 secutors or, on the other hand, feel any sympathy for the
7 prosecution in this case?

8 A No, sir.

9 Q You ever had any such experience that would in
10 any way enter into your deliberations in passing upon the
11 rights of the defendants here, either feel sympathy for them
12 or feel prejudice against them?

13 A No, sir.

14 Q Do you now have or have you had any lawsuit in
15 which you were a party or in which you were a witness?

16 A No, sir.

17 Q Any member of your family that has?

18 A No, sir.

19 Q You indicate that you have had previous jury
20 service in this court. When was that, Mr. Arp?

21 A I don't remember the exact year, possibly 1950,
22 '51, possibly.

23 Q Other than that jury service have you had other
24 jury service?

25 A Local there in Bradley County, local courts,

1 civil courts.

2 Q Have you served on juries there more than once?

3 A Yes, sir, I have served.

4 Q About how many times?

5 A Oh, four or five times.

6 Q Have you served on the trial of both civil cases
7 and criminal cases?

8 A And criminal and the grand jury, too.

9 Q Anything about that jury experience that would
10 cause you to have any sympathy for or any prejudice against
11 the prosecution in this case?

12 A No, sir.

13 Q Anything about that previous jury service that
14 would cause you to have any sympathy for or any prejudice
15 against any defendant in this case?

16 A No, sir.

17 Q Mr. Arp, are you in any way connected with any
18 law enforcement agency at the present time?

19 A Well, I have got a card, I don't know whether
20 this would be--I carry a deputy's card.

21 Q You carry a deputy's card?

22 A Yes, sir, on the police department there in
23 Cleveland, too.

24 Q What is your connection in that regard?

25 A None.

1 Q Do you engage in any activity?

2 A No, sir.

3 Q Draw any salary or any compensation from that
4 source?

5 A No, sir.

6 Q Have you ever drawn any salary or compensation
7 from that source?

8 A No, sir, other than when I was in the workhouse
9 I was on the payroll of the county then the four years I was
10 there.

11 Q All right. Mr. Arp, have you ever belonged to
12 a labor organization?

13 A No, sir.

14 Q You ever had any sympathy for or prejudice
15 against a labor organization that would in any way influence
16 you in the trial of this lawsuit?

17 A No, sir.

18 Q You ever had anyone of your family in any way
19 connected with the Teamsters Union?

20 A I don't know. I have a son that is a member
21 of labor, a labor organization, he works at Bowaters and I
22 don't even know--I heard him say he was a union steward, I
23 don't even know what that is, I don't know what.

24 Q Well, have you ever or any member of your family,
25 to your knowledge, ever received any benefit or suffered any

1 detriment by reason of any union activity?

2 A No, sir.

3 Q Or any activity on behalf of the Teamsters Union?

4 A No, sir.

5 Q Do you have any feelings about the person of
6 another race that would in any way enter into your delibera-
7 tions as a juror?

8 A No, sir.

9 Q To what extent, if any, have you seen publicity
10 about this case or about any of the parties to this case or
11 the television or newspapers?

12 A I have read the Chattanooga Free Press and the
13 Cleveland Banner, of course, and I have seen a few programs
14 on the news here on the television stations here at Chatta-
15 nooga.

16 Q From what you have seen or from what you have
17 heard have you formed any opinion with regard to either the
18 guilt or the innocence of any party to this lawsuit?

19 A No, sir.

20 Q Have you formed or expressed any opinion at any
21 time to anybody with regard to either the guilt or the
22 innocence of any party to this lawsuit?

23 A No, sir.

24 Q Anybody expressed any opinion to you with regard
25 to the guilt or innocence of any party to this lawsuit?

1 A (Moves head from side to side.)

2 Q Do you have any acquaintanceship with any members
3 of any federal law enforcement agency?

4 A No, sir.

5 Q At this time?

6 A No, sir.

7 Q Do you belong to any law enforcement organization,
8 other than the extent that you have spoken of having a card?

9 A No, sir.

10 Q I take that is a deputy card?

11 A Yes, sir.

12 Q Anything in that relationship that would in any
13 way enter into your deliberations in this case?

14 A No, sir.

15 Q And prevent you from passing, if you were selected
16 as a juror, fairly and impartially?

17 A No, sir.

18 Q Did you in any way request or seek to be selected
19 on this jury?

20 A No, sir.

21 Q Has anyone talked to you or in any way com-
22 municated with you about this case or about your serving
23 as a juror in the case in a manner that would seek to
24 influence you in any way in serving as a juror?

25 A No.

1 Q Anyone speak to you about possible jury service
2 before you were subpoenaed to report?

3 A No, sir.

4 Q Are you subject to any pressure or to any in-
5 fluences that you can think of that would in any way inter-
6 fere with your rendering a fair and impartial verdict in
7 accordance with your own conscience and in accordance with
8 the evidence and the instructions of the Court?

9 A No, sir.

10 Q Do you have any prejudice against any one party
11 or attorney because he came from another section of the
12 United States from that in which you live?

13 A No, sir.

14 Q Since you have been here waiting on the jury
15 panel, have you had any experience or have you received any
16 information that would in any way prevent you from serving
17 impartially in the case should you be selected?

18 A No, sir.

19 Q Any experience that you have had since you have
20 been here that would cause you to feel any sympathy for or
21 any prejudice against either side of this lawsuit?

22 A No, sir.

23 Q Would you be willing to judge each witness on
24 his individual merit, irrespective of who may have put him
25 into the witness chair?

1

A Yes, sir.

2

Q Would you be willing to judge each witness on his individual merit, irrespective of his occupation, whether he was a law enforcement officer or whether he was of some other occupation?

5

6

A Yes, sir.

7

Q What organizations are you a member of?

8

A I am a member of the Masonic organization.

End Tk 17
Tk 18 fls.

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Arp -- Bullen

1 Q As you sit there now, do you know of any reason why
2 if you were selected to try this case you could not be fair
3 and impartial and serve as a juror, listen to the evidence,
4 try the case on that evidence and on the instructions of the
5 Court?

6 A No, sir.

7 Q Do you know of any reason why you could not do
8 that?

9 A No, sir.

10 HAL W. BULLEN,

11 a venireman, having first been duly sworn, was examined and
12 answered as follows:

13 EXAMINATION BY THE COURT:

14 Q You live here in Chattanooga?

15 A Yes, sir.

16 Q Mr. Bullen, I notice your age, is there anything
17 about your health that would require any medical-- , are you
18 taking any medical treatment or anything like that that would
19 in any way interfere with your possible serving if you were
20 selected as a juror?

21 A No, sir.

22 Q Do you live here with your wife?

23 A Yes, sir.

24 Q Do you have any children?

25 A Two. A grown daughter and a grown son.

1 Q Where do they live?

2 A My daughter is in Boston and the son is in
3 Syracuse, New York.

4 Q What was your occupation? I believe you are
5 retired now. Is that correct?

6 A Yes, sir.

7 Q How long have you been retired, Mr. Bullen?

8 A One year on January 1 a year ago.

9 Q January 1 of 1963?

10 A Yes, sir.

11 Q And before you retired could you just tell us
12 something about what occupation you followed through your
13 lifetime and where you were employed?

14 A I came here in 1948 when the Southern Electrical
15 Company was being formed. I was the sales manager and vice
16 president. And we sold out to Owen Glassen Chemical Corporation
17 I think in 1957. And I kept on as director of sales of
18 this division until September 1, 1959 when they kept me on
19 as a sales consultant up until a year ago. Prior to that I
20 was in the United States Steel Corporation for thirty years
21 in Denver, Salt Lake City and Chicago, excepting for a year
22 or two out in World War I and then a little airplane venture
23 of my own.

24 Q Have you ever been employed in any capacity with
25 the United States Government?

1 A None. No, sir.

2 Q Any member of your family that has been or is now
3 so employed?

4 A No, sir.

5 Q Have you ever had any dealings with the United
6 States Government that would cause you to feel any prejudice
7 against or any sympathy for the prosecution in this case?

8 A None.

9 Q Or for either of the defendants in the case?

10 A No, sir.

11 Q Are you a party to any litigation now or have you
12 ever been a party to or witness to any lawsuit?

13 A I was called as a witness before the Federal
14 Grand Jury in Philadelphia I think in October, 1962.

15 Q In what connection? What was the matter under
16 investigation at that time?

17 A The Government was investigating the aluminum
18 cable manufacturers on a matter of price collusion.

19 Q Any other case in which you've been a party or a
20 witness?

21 A None.

22 Q Was there anything in that experience that would
23 cause you to have any prejudice against or sympathy for the
24 prosecution or defense in this lawsuit?

25 A None. No, sir.

1 Q Have you had previous jury service?

2 A Yes. I was on the Hamilton County jury I think
3 twice.

4 Q The last time? You listed an occasion in October,
5 1962?

6 A 1962 I believe was the last. I don't know what
7 month.

8 Q Were you on any previous occasion previous to
9 that?

10 A A few years prior.

11 Q Did you serve on civil or criminal cases or both?

12 A Both.

13 Q Anything in that experience that would cause you
14 to have any feeling about any party in this lawsuit or either
15 side of the lawsuit?

16 A No, sir.

17 Q Or enter into your deliberations in the case?

18 A No, sir.

19 Q Do you now belong to or have you belonged to a
20 labor organization?

21 A No, sir.

22 Q Any member of your family that does?

23 A No, sir.

24 Q Have you had any experience, any feeling of sympathy
25 for or prejudice against any labor union that would in any

1 way enter into your deliberations in this case should you be
2 selected as a juror?

3 A No, sir.

4 Q Have you ever had any detriment from or received
5 any benefit from any activity on behalf of the Teamsters Union?

6 A No.

7 Q Do you have any feeling toward persons of another
8 race from yourself that would in any way enter into your
9 deliberations in the trial of this case if selected as a
10 juror?

11 A No, sir.

12 Q To what extent, if any, have you read any
13 publicity about this case or seen any or heard any news
14 accounts or seen any television programs?

15 A Only the local papers over the last ten days or
16 so.

17 Q You are referring to the Chattanooga papers?

18 A The Times and Free Press. Mostly the Times.

19 Q From what you have seen and from what you have
20 read in those papers have you formed any opinion as to the
21 guilt or innocence of any party to this lawsuit?

22 A No, sir, none at all.

23 Q Did you in any way request or seek to be selected
24 upon this jury?

25 A No, sir.

1 Q Has anyone at any time talked to you or in any
2 way or in any manner communicated with you about this case
3 or about your serving as a juror in this case in a manner
4 that would seek to influence you?

5 A No, sir.

6 Q In any way in serving upon the jury?

7 A No, sir.

8 Q Has anyone spoken to you about jury service before
9 you were subpoenaed?

10 A No, sir.

11 Q Or about possible jury service?

12 A No, sir.

13 Q Are you subject to any pressures or any influences
14 that you can think of that would in any way prevent you from
15 rendering a fair and impartial verdict in accordance with
16 your own good conscience and in accordance with the
17 instructions of the Court and the law of the case and the
18 evidence as you hear it in open court?

19 A None whatever.

20 Q Do you have any prejudice against any party or
21 any sympathy for another party or attorney if he comes from
22 another part of the state or another part of the nation than
23 that in which you live?

24 A No, sir.

25 Q Since you've been here for jury service have you

1 had any experience or received any information that would
2 in any way influence you in the trial of this case or so as
3 to have any prejudice against any party or any sympathy for
4 any party?

5 A No, sir.

6 Q Would you be willing to judge each witness on
7 his individual merit irrespective of who might put him on
8 the witness stand?

9 A Yes, sir.

10 Q Would you be willing to judge each party or
11 each witness on his individual merit irrespective of what
12 his occupation might be, whether he was a law enforcement
13 officer or whether he was of some other occupation or calling?

14 A Yes, sir.

15 Q What organizations are you a member of?

16 A None.

17 Q Do you know of any reason, Mr. Bullen, as you sit
18 there now, why if you were selected as a juror in this
19 case that you could not perform your duties impartially and
20 fairly, listen to the evidence, listen to the instructions of
21 the Court, follow those instructions and decide this case
22 fairly and impartially solely upon that?

23 A No.

24 BRUCE RINGER,

25 a venireman, having first been duly sworn, was examined and

1 answered as follows:

2 EXAMINATION BY THE COURT:

3 Q Mr. Ringer, you live at Collegedale?

4 A That's right.

5 Q How long have you lived there?

6 A About 17 years.

7 Q Could you tell us first what family you have?

8 A I have three children. Girl and two boys.

9 Q Are the children at home?

10 A Yes, sir.

11 Q Tell us what you do, sir, and what your job is.

12 A I am manager of Southern Mercantile. It is a
13 college book store and general merchandise.

14 Q There at Southern Missionary College?

15 A That's right.

16 Q How long have you held that position?

17 A About six years.

18 Q Could you tell us what occupations you have
19 followed during your lifetime?

20 A Well, after military service I was a student at
21 the college. And after graduation I've been employed at the
22 college.

23 Q You've been employed at all times there at the
24 college?

25 A That's right.

1 Q What sort of employment have you followed?

2 A I've had the distributorship of special foods.
3 And Southern Mercantile management.

4 Q Would you just tell us something about Southern
5 Missionary College, what it is, what kind of college it is,
6 and who operates it?

7 A It is operated by the Seventh Day Adventists.
8 It is co-ed college. Liberal arts college.

9 Q Your wife, is she employed other than as a house-
10 wife?

11 A Part-time.

12 Q Where does she work?

13 A McKee Baking at the college.

14 Q Is that in some way connected or located there at
15 Collegedale?

16 A Yes, it is on the campus.

17 Q What kind of work does she do?

18 A She works in the packaging department.

19 Q Mr. Ringer, have you ever had any employment by
20 or any connection with the United States Government?

21 A Military service. 1943 through 1946.

22 Q What branch of the service were you in?

23 A Well, I was in the anti-aircraft artillery branch.

24 Q Anything in that military service that would
25 cause you to have any sympathy for or any prejudice against

1 any person who might be a party to this lawsuit that was an
2 officer in the military service during the war?

3 A No, sir.

4 Q Is there any member of your family that is employed
5 by or connected with the United States Government?

6 A No, sir.

7 Q Have you ever had any problems with the United
8 States Government that would cause you to have any sympathy
9 for or any prejudice against the prosecution in this lawsuit?

10 A No, sir.

11 Q Any such experience as would cause you to have
12 any sympathy for or any prejudice against any defendant in
13 this lawsuit?

14 A No, sir.

15 Q Have you now pending anywhere any litigation in
16 which you are a party to or have you had any such litigation
17 which you were a party to or witness to?

End Tk
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Tk 19
follows

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1 Q Any immediate member of your family that has had
2 lawsuits?

3 A No, sir.

4 Q Have you had previous jury service?

5 A No, sir.

6 Q Do you now belong to any labor organization?

7 A No, sir.

8 Q Have you ever belonged to a labor organization?

9 A No, sir.

10 Q Any member of your family that has belonged to a
11 labor organization?

12 A I have a brother-in-law that was in the Printer's
13 Union.

14 Q Printer's Union?

15 A Yes, sir.

16 Q Where does he live?

17 A Indianapolis, Indiana.

18 Q Do you have any sympathy for or prejudice against
19 labor unions that would in any way enter into your delibera-
20 tions in the trial of this case should you be selected as a
21 juror?

22 A Not specific, no.

23 MR. ALEXANDER: What was the answer? I didn't get
24 that.

25 Q I didn't understand that.

1 A I don't have any prejudice against it. I have
2 not joined the union, but I do not have prejudice against the
3 union.

4 Q Well, is there anything in your feelings about
5 unions that would in any way enter into your deliberations
6 in this case if you were selected to try the case?

7 A I don't think so, no, sir.

8 Q Do you have any members of your family who are
9 in any way connected with the Teamsters Union?

10 A Not to my knowledge.

11 Q Is there anything about the Teamsters Union or
12 the way it has conducted its activities that would cause you
13 to be either in sympathy with or have any prejudice against
14 any defendant in this case in the trial of the case should you
15 be selected as a juror?

16 A State that again, please.

17 Q Is there anything in the activities of the
18 Teamsters Union that would cause you to enter upon your delib-
19 erations in this case with any prejudice against any defendant
20 in this case or any sympathy for any defendant in this case?

21 A Not that I know of on the evidence that is before
22 the Court.

23 Q Well, is there anything that you know of that would
24 prevent you from trying each defendant individually and solely
25 on the evidence in this court, being impartial?

1 A No, sir; no, sir.

2 Q Do you have any feeling toward persons of another
3 race?

4 A No, sir.

5 Q That would enter into your deliberations?

6 A No, sir.

7 Q In this case to prevent you from being impartial?

8 A No.

9 Q To what extent have you read or heard any
10 publicity about the case?

11 A Just the general news and television.

12 Q What source did this news come from?

13 A Both the Times and the Free Press and the local
14 television stations.

15 Q Anything that you have seen or have read or have
16 heard in that regard that would cause you to enter upon your
17 deliberations in this case or cause you to enter as a juror
18 in this case with any opinion of the guilt or innocence of
19 any party to the lawsuit?

20 A No, sir, I think I would give a fair hearing.

21 Q Did you in any way request or seek to be selected
22 upon this jury?

23 A No, sir.

24 Q Has anyone talked with you in any way or com-
25 municated with you in any way about this case or about your

1 serving as a juror in the case in a manner that would seek to
2 influence you in any way in serving upon the jury?

3 A No.

4 Q Has anyone spoken to you or did anyone speak to
5 you about possible jury service before you received your
6 subpoena in the case?

7 A No, sir.

8 Q Are you subject to any influences or any pressures
9 from any source that you can think of that might prevent you
10 from rendering a fair and impartial verdict on the evidence
11 and on the law and in accordance with your own conscience as
12 to what you feel should be done on the basis of that?

13 A I don't think so.

14 Q Do you have any sympathy for or prejudice against
15 any person or party to the lawsuit because he might come from
16 another section of the state or another section of the nation?

17 A No, sir.

18 Q Since you have been here as a juror in the court-
19 house, have you had any experience or received any information
20 that would cause you to have any sympathy for or prejudice
21 against either the prosecution or the defense of this lawsuit?

22 A No, sir.

23 Q Would you be willing to pass upon each witness
24 on his individual merits, irrespective of who might have put
25 him on the witness stand and weigh his evidence accordingly?

1 A Yes, sir.

2 Q Would you be willing to do that irrespective of
3 his occupation, irrespective of whether he was a law enforce-
4 ment officer or someone of some other occupation?

5 A Yes, sir.

6 Q What organizations are you a member of?

7 A Past Jaycee member and member of the Seventh-Day
8 Adventist Church at Collegedale.

9 MR. ALEXANDER: I couldn't hear that.

10 Q Would you repeat your answer?

11 A I have been a past member of the Jaycees and a
12 member at the present time of the Seventh-Day Adventist Church
13 at Collegedale.

14 ANNIE L. GUINN,

15 a venirewoman, having been first duly sworn, was examined and
16 answered as follows:

17 EXAMINATION BY THE COURT:

18 Q All right, Mrs. Guinn?

19 A (Moves head up and down.)

20 Q Mrs. Guinn, you live on Ringgold Road. That would
21 be out in East Ridge, is that correct?

22 A About three miles east of the Bachman tubes.

23 Q What family do you have?

24 A Just my husband, no children.

25 Q And you are a housewife?

1 A Yes, sir.

2 Q Your husband, you list his occupation as a store-
3 room manager at Erlanger Hospital?

4 A That's right.

5 Q How long has he held that position?

6 A About six years, prior to that he was employed
7 by the government.

8 Q U. S. Government?

9 A (Moves head up and down.)

10 Q In what capacity?

11 A Well, he was with the War Department in the
12 capacity of storeroom manager.

13 Q And where was that place of employment?

14 A Starting at Camp Forrest, from Camp Forrest to
15 Fort Oglethorpe, and from Fort Oglethorpe to the Volunteer
16 Ordnance.

17 Q And it was from that position then that he came
18 to Erlanger Hospital?

19 A That's right, and then he left there and went to
20 Erlanger Hospital.

21 Q Other than that employment as a storeroom officer
22 with the War Department by your husband, has any other
23 member of your family or has your husband had any other
24 employment with the United States Government?

25 A None.

1 Q Have you ever had any employment with the United
2 States Government?

3 A Yes, sir.

4 Q In what capacity?

5 A I was clerk-typist with the Quartermaster Corps,
6 ordnance.

7 Q When and where was that?

8 A From 1940 to 1954, since then I have been a
9 housewife.

10 Q Have you ever had any difficulty with the United
11 States Government or has any member of your family had any
12 difficulty with the United States Government or any problems
13 with the government that would in any way cause you to feel
14 any prejudice for or any sympathy for the prosecution in this
15 lawsuit?

16 A No, sir.

17 Q Or for the defense in the lawsuit?

18 A No, sir.

19 Q Are you now a party to any litigation or have you
20 been a party to any litigation or any lawsuit or a witness
21 to any lawsuit?

22 A Do you mean with the government or just local?

23 Q No, anybody.

24 A Just a small lawsuit that pertained to drainage
25 of property, which was several years ago, just a minor thing.

- 1 Q Was that a lawsuit in which you were a party?
- 2 A My husband and I.
- 3 Q Your husband?
- 4 A Just drainage of some property, water drainage.
- 5 Q Anything in that experience that would cause you
- 6 to have any sympathy for or any prejudice against either side
- 7 in this lawsuit?
- 8 A No, sir.
- 9 Q Or any party in the lawsuit?
- 10 A No, sir.
- 11 Q Have you ever been a member of any labor organiza-
- 12 tion?
- 13 A No, sir.
- 14 Q Has your husband?
- 15 A No, sir.
- 16 Q Do you have any feeling toward labor organizations
- 17 that would prevent you from, if selected to try this case,
- 18 sitting upon the case and trying it fairly and impartially
- 19 to both sides and to each individual in the case?
- 20 A My feeling toward labor?
- 21 Q Would that enter into your --
- 22 A (Interposing) No, sir, none at all.
- 23 Q Do you have any feeling toward people of another
- 24 race that would --
- 25 A (Interposing) No.

1 Q That would enter into your deliberations should
2 you be selected as a juror?

3 A None at all.

4 Q To what extent have you read or heard any news
5 accounts of this trial or of any party to the trial?

6 A Your Honor, I don't read the newspapers but very,
7 very little and the news of the television program or the
8 news comes on about the time I am fixing my evening meal and
9 I really don't know a thing in the world about it.

10 Q All right. Have you ever formed or expressed any
11 opinion about the guilt or innocence of any party to this
12 lawsuit?

13 A No, sir.

14 Q Did you in any way request or seek selection upon
15 this jury?

TK 19 End 16 A No, sir, I did not.
TK 20 fls

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1 Q Did anyone talk to you or in any way communicate
2 with you about this service or about your serving in this
3 case in a manner that would seek to influence you in any way
4 in serving upon the jury in this case?

5 A No, sir.

6 Q Anyone speak to you about possible jury service
7 in this case before you were subpoenaed?

8 A Oh, no, not before I was subpoenaed, no.

9 Q Are you subject to any pressures or any influences
10 that you can think of that would in any way prevent you from
11 rendering a fair and impartial verdict solely on the evidence
12 and the law and in accordance with your own good conscience?

13 A No, sir.

14 Q Do you have any prejudice against any person or
15 any attorney who might reside in another part of the United
16 States or another part of the nation or another part of the
17 state than that in which you live?

18 A No, sir.

19 Q Since you have been here, have you had any
20 experience or received any information that would cause you
21 to have any sympathy for or any prejudice against either
22 side in this lawsuit or any party in the lawsuit?

23 A No, sir, none at all.

24 Q Would you be able to judge each witness on his
25 individual merit and give his testimony such weight and

1 credence as you think proper irrespective of who might put
2 him on the witness stand or which side might put him on the
3 witness stand?

4 A Yes, sir.

5 Q Would you be able to do that irrespective of
6 whether he was a law enforcement officer on one hand or
7 whether he had some other occupation or calling on the other?

8 A Yes, sir.

9 Q What organizations are you a member of, Mrs.
10 Guinn?

11 A I am a member of the East Ridge Church of Christ
12 and past worthy matron of my chapter of the Order of the
13 Eastern Star.

14 Q As you sit there now, do you know of any reason
15 why if you were selected as a juror on this case that you
16 couldn't listen to the evidence, follow the instructions of
17 the Court, and decide this case in accordance with those
18 instructions fairly and impartially to both sides and to all
19 parties in the case?

20 A Yes, sir, as much as I am capable of.

21 THE COURT: All right, gentlemen, there are
22 further questions that the Court has to direct to the panel.
23 I am just debating whether we should recess at this time or--
24 well, let's go forward.

25 Ladies and gentlemen, these questions will be

1 directed to you as a group but give an individual response
2 to them to the extent that you have any response to give.

3 By virtue of the fact that the Court has decided
4 that it would be proper and appropriate in this case and in
5 the interests of a fair and impartial trial that the jury
6 should be held together throughout the case, until the case
7 has been tried and decided, would that cause you to have any
8 prejudice against or any sympathy for the other side in this
9 lawsuit or any party in the lawsuit?

10 I take it by your silence that you indicate that
11 it would not.

12 If the Court, as it will, should instruct you
13 that no influence of guilt should be drawn by you from the
14 fact that any defendant has been indicted, but that the
15 indictment is just a means of bringing a charge before the
16 Court, would you follow that instruction?

17 Would any of you infer any guilt on the part of
18 a defendant merely because of the fact that he may have been
19 indicted?

20 Does any juror personally know of any other
21 person who is or who may be a witness in this lawsuit?

22 If the Court should instruct you, as it will,
23 with regard to the fact that each defendant is presumed to
24 be innocent of the matters of which he is charged, until and
25 unless you are satisfied from the evidence beyond a reasonable

1 doubt of his guilt, would you follow that instruction of the
2 Court?

3 Would the fact that one of the defendants, Mr.
4 Hoffa, may have received publicity throughout the nation
5 cause you to have any prejudice against or any sympathy for
6 Mr. Hoffa or any prejudice against or sympathy for any other
7 defendant in this lawsuit or in any way prevent you from
8 trying the case fairly and impartially?

9 Have you discussed the trial of this case with
10 anyone and, if so, with whom?

11 If after completion of the trial of the case and
12 the arguments of the attorneys and the charge of the Court,
13 you retire to consider your verdict and then after a full
14 deliberation and due consideration of your fellow jurors'
15 views, you find that you conscientiously disagree with
16 regard to the verdict in the case, would you surrender your
17 conscientious convictions merely to arrive at a unanimous
18 verdict?

19 Are there any members of the jury who are
20 acquainted with Mr. Robert Kennedy, the Attorney General
21 of the United States? Or Mr. Walter Sheridan or Mr. Charles
22 Shaffer, of the United States Attorney's Office?

23 Does any member of the jury panel have any
24 relative or friend who is now or who has been employed by
25 the Department of Justice?

1 Any member of the panel who is now or has ever
2 been employed by the United States Secret Service?

3 Have you had any member of the panel who has a
4 relative or a friend who is now or who has been employed by
5 the United States Secret Service?

6 Any member of the panel other than Mr. Arp who
7 has been engaged in police work or in prison work?

8 THE COURT: Mr. Arp, have you heretofore told
9 us of your experience in that connection fully?

10 MR. ARP: Sir?

11 THE COURT: Have you heretofore told us of your
12 connection in that regard heretofore fully about any police
13 or prison work?

14 MR. ARP: No, sir, I don't--

15 THE COURT: Maybe I didn't make myself clear.
16 I believe you indicated that at one time you were assisting
17 or operated the workhouse?

18 MR. ARP: Yes, sir, for four years.

19 THE COURT: Is that the only police or prison
20 work that you have had?

21 MR. ARP: Yes, sir.

22 THE COURT: Where was that?

23 MR. ARP: Bradley County.

24 THE COURT: Does a member of this panel have a
25 relative or a friend who served on the grand jury that

1 returned the indictment in this case?

2 Is there any member of the panel who has a
3 relative who is now or whoever has been employed by a railroad
4 or by a trucking company? All right, what trucking company?

5 MRS. GUINN: I had a brother that worked for the
6 NC&St.L Railroad for a good many years, but he is retired
7 now and has been retired about six or eight years, but to my
8 knowledge I don't know of any union that he ever belonged to.
9 If he did, I don't know what it was.

10 THE COURT: Yes, sir, any other matter? State
11 your name so that it will appear in the record.

12 THE VENIREMAN: Morrison. Ed Morrison. My
13 father was employed by the C&O Railroad for, oh, a number of
14 years up until about 1929, I believe.

15 THE COURT: What sort of work did he do with
16 the railroad?

17 MR. MORRISON: I believe he was a fireman I
18 believe is what he belonged to, the B.F.R., Brotherhood of
19 Railroad Trainmen.

20 THE COURT: Brotherhood of Railroad Trainmen?

21 MR. MORRISON: I believe so.

22 THE COURT: Any other matters?

23 MR. TYLER: I had a brother-in-law retired who
24 was a fireman with Southern Railway Company.

25 THE COURT: All right, yes, sir.

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MR. McCAMPBELL: Charles McCampbell. I have a first coursion who is an engineer for the NC&St.L.

THE COURT: Any other jurors?

MR. ALBRITTON: Hoyt Albritton. My father was a conductor on the L&N Railroad for several years.

THE COURT: All right, Mr. Arp.

MR. ARP: John Arp. My father was telegraph operator for the L&N Railroad.

THE COURT: Any others? Any members of the panel who have relatives or friends who are employed by shipping companies?

Ad Tk 20
Tk 21 fls.
13

1 If any officer of an international trade union
2 should be called as a witness in this case or to take the
3 witness stand in the case and should invoke his constitutional
4 privilege against being a witness against himself, would
5 any member of the panel be prejudiced against any of the
6 defendants in this case by reason of that fact?

7 Any members of the jury, other than, I believe
8 Mr. Albritton, who has indicated that he is an officer in
9 a business, who own and operate your own business?

10 Any of you who have had occasion to deal with or
11 negotiate with the labor unions in connection with your
12 occupation or employment?

13 MR. SHIPLEY: Yes, sir, Shipley, Irvin Shipley.

14 THE COURT: Yes, Mr. Shipley.

15 MR. SHIPLEY: The usual grievances in our union
16 at the plant, of course, I take management's end of it.

17 THE COURT: Well, would that experience, anything
18 in that experience that would cause you to have any sympathy
19 for or any prejudice against any party to this lawsuit?

20 MR. SHIPLEY: No, sir.

21 THE COURT: Any member of the panel that has ever
22 been involved in a labor dispute, either as an employer or
23 as an employee?

24 MR. SHIPLEY: Yes, sir.

25 THE COURT: To any extent beyond what you have just

1 described to us?

2 MR. SHIPLEY: No, sir, just usually contract
3 interpretation.

4 THE COURT: Any member of the panel who has a
5 relative or close friend who was ever involved in a labor
6 dispute, either as an employer or employee other than as has
7 been stated?

8 Any member of the panel or his or her relatives
9 or friends who own stock in a corporation or business that
10 has been affected by a strike or by labor difficulties?

11 Should the evidence in your opinion warrant and
12 justify a verdict of acquittal as to any defendant or as to
13 all defendants in the case, would any of you have any fear
14 of any loss of employment or loss of promotion, loss of
15 any benefits by reason of voting your convictions in that
16 respect?

17 Has any member of the panel ever written anything
18 for publication on labor-management relations?

19 Does any reason suggest itself to any member of
20 this panel as to why he or she could not render a just verdict
21 based upon the law and evidence as given to you by the
22 Court?

23 All right. It's time, let's adjourn court until
24 2:15.

25 MR. REDDY: What hour?

1 THE COURT: First let's excuse the jury. Ladies
2 and gentlemen, now, do not discuss this case, do not talk
3 about it among yourselves, do not allow anyone to talk to
4 you about it or talk about it in your presence and keep
5 yourself in a posture whereby if you are called or selected
6 to serve as a juror in this case that you can do so fairly
7 and impartially and on the basis solely of the proceedings
8 in court under the instructions of the court. Go with the
9 officer.

10 (The panel referred to above was excluded from
11 the courtroom and in its absence the following proceedings
12 were had to-wit:)

13 THE COURT: Gentlemen, we will recess court at
14 this time for lunch until 2:15. At that time have prepared
15 to submit to the court any further or additional requests
16 that you may have to be directed to the jury or any
17 individual juror. Let's be in adjournment until 2:15.

18 (Thereupon, at 12:32 o'clock p. m., Court was
19 adjourned for the noon recess until 2:15 o'clock p. m.)

End
'k 21

Tk 22
follows

AFTERNOON SESSION

2:30 O'Clock P.M.

(Thereupon, pursuant to adjournment for the noon recess court was in session.)

THE COURT: All right, gentlemen, are there any questions that you wish to submit to the Court?

MR. HOOKER: Nothing for the government.

THE COURT: Any further questions? On voir dire?

MR. BRANSTETTER: I have a matter that relates to that but not a specific question as such.

THE COURT: First, let's take this matter, are there any questions? All right.

MR. BRANSTETTER: May it please the Court, the questions that were submitted on yesterday--

THE COURT: Do you wish to re-submit the questions?

MR. BRANSTETTER: We would like to ask that they be re-submitted.

THE COURT: They will be considered as re-submitted on behalf of all defendants.

MR. BRANSTETTER: On behalf of all defendants and if it is appropriate I think that we might request that they be noted as filed and made a part of the record and I have one I would like to hand up that I'm finishing.

THE COURT: All right, sir.

MR. BRANSTETTER: I now have a motion, may it

1 please the Court, if it is the appropriate time to present
2 it.

3 THE COURT: Yes, sir, the Court will recognize
4 you, Mr. Branstetter.

5 MR. BRANSTETTER: I furnished government counsel
6 with a copy. I would like to read it. It is very short.

7 THE COURT: All right.

8 MR. BRANSTETTER: Come now defendants and again
9 respectfully suggest to the Court and request that the Court
10 explain and instruct the prospective panel of jurors in
11 detail of their functions if they are selected as jurors
12 giving specifically the basic law that governs in this case.

13 Specifically it is requested that the Court
14 clearly and specifically tell the prospective jurors on the
15 voir dire that the defendants and each of them are presumed
16 to be innocent. That presumption of innocence continues
17 until and unless it has been overcome by evidence which
18 establishes the guilt of each defendant beyond a reasonable
19 doubt.

20 That the burden of proving either all of the
21 defendants guilty is on the government and that burden never
22 shifts. That there is no duty on any defendant to prove
23 himself innocent. That before any defendant can be found
24 guilty the government must produce evidence which is suffi-
25 cient to convince each and every juror of the guilt of such

1 defendant.

2 That the indictment is not to be taken as any
3 evidence of guilt or even as a suspicion of guilt. That the
4 indictment is merely a form that is used to bring a case into
5 court. That fact that a defendant is arrested, indicted and
6 is a defendant in a case is not to be considered as evidence
7 against him in any manner whatsoever. It is respectfully
8 requested that the jurors must be made aware of the foregoing
9 propositions of law the very beginning and before they are
10 accepted as jurors.

11 A juror cannot in good conscience sit on the
12 jury and perform his function even if a juror has the desire
13 to fulfill his obligations and to be a good juror in the
14 absence of a knowledge of the law that is to govern his
15 conduct at the beginning of trial.

16 It is impossible for him to fulfill his functions
17 and certainly the constitutional guarantee of due process
18 cannot be met unless the jurors are fully advised on the
19 above basic principles of law and fully understand and the
20 Court must make certain that they do understand these
21 principles and agree to follow such principles and an
22 abstract proposition given by the Court that the Court will
23 instruct at the end of the trial and a question as to
24 whether the jurors will follow the law as given by the Court
25 does not suffice. The jurors must be aware prior to the

1 beginning of the trial of these basic principles.

2 It is further contended that in this case more
3 so than in any ordinary case it is imperative that the basic
4 principles of law be made clearly and unequivocally by the
5 Court to the jury and the Court ascertain that each juror is
6 fully cognizant of these basic principles of law from the
7 very beginning because in this case there are multiple
8 defendants and most members of the panel who have been
9 questioned have indicated that they have some knowledge
10 about the defendants or about the case from newspaper accounts
11 or otherwise and unless they understand that they must start
12 with the bases that each defendant is presumed to be innocent
13 and that the burden is on the government to prove guilt and
14 that the presumption of innocence continues throughout the
15 trial and into the jury deliberations, there is no way that
16 a juror can properly perform this function.

17 It is contended by the defendant that up to this
18 point even though requested by the defendants the Court has
19 not fully advised the jurors on these premises.

20 It is further respectfully requested that as to
21 the above matters that counsel for the defendants be per-
22 mitted to directly interrogate the jurors.

1 I have stated for the record that I have handed
2 counsel for the government a copy and request that it be filed
3 as a motion at this time, although there is no certificate of
4 service.

5 May it please the Court, we respectfully submit
6 that this is of the utmost importance to a fair and impartial
7 trial. It is further respectfully suggested that when the
8 Court has asked these questions with reference to the matter
9 of presumption of innocence that was previously submitted,
10 that they were asked in such negative form as not to draw an
11 answer from any juror as to whether or not at the present
12 time they knew the law was that a defendant is presumed
13 innocent until proven guilty and this, may it please the
14 Court, is not a matter of instruction when the jury is given
15 final instructions because at this moment, unless each and
16 every prospective juror on voir dire knows the law to be as
17 stated in the motion, then they are not qualified to sit in
18 the jury box.

19 THE COURT: All right.

20 MR. SCHIFFER: Your Honor, I have one matter which --

21 THE COURT: (Interposing) No, let's complete
22 this matter at this time.

23 MR. BRANSTETTER: May it please the Court, this
24 is submitted, although stated at the bottom for the Defendant
25 Larry Campbell, I am authorized to submit it on behalf of all

1 defendants.

2 THE COURT: All defendants. All right, it will be
3 so considered. Do you wish to say anything to the motion?

4 MR. NEAL: Just, your Honor, that you charged
5 this in substance generally once at their request. It seems
6 to me to charge it again, you charged it almost word for word
7 just prior to noon, any other charge like this will certainly
8 convince the jury that there is something more here that the
9 Court is trying to tell them, I think.

10 THE COURT: Well, is there any objection to what
11 they have requested here as a matter of law?

12 MR. NEAL: Well, I think there could be some
13 objection to it as a matter of law, but I don't think that
14 the jury, before they heard a word, should be instructed
15 three or four times as to the presumption of innocence, to the
16 burden of proof of the government.

17 I remember clearly the Court charging on every
18 word of these things. I think there may be some question,
19 for example, with a charge that presumption of innocence
20 carries through the trial and into the jury room. I am not
21 so sure that that is the law. There is a legal presumption,
22 of course, at the start of the trial. When that is dissipated,
23 I don't know, but the point I am making, your Honor, seriously
24 is that these have been charged once, once specifically and
25 once generally, to every man in there and the government

1 remembers clearly it being done.

2 MR. BRANSTETTER: May it please the Court, in
3 response to government counsel, the very basic concept that we
4 are now requesting has been basic to the law since the existence
5 of this country and the government.

6 Let me give an example, may it please the Court.
7 When the jury comes in to be asked questions from voir dire,
8 at that very moment when they are subpoenaed, when they go in
9 in the evening, when they go in after the case is submitted,
10 at every stage of the proceeding the presumption of innocence
11 is right there in front of them under the law and the govern-
12 ment must begin at the bottom and seek to stack up enough
13 evidence step by step, step by step, until they rise above the
14 presumption of innocence and until they have done that and
15 shot so high as to destroy the presumption of innocence and
16 to show the defendant or defendants guilty beyond a reasonable
17 doubt, then it should be kept in front of the jury. It's
18 basic to constitutional due process.

19 THE COURT: All right.

20 MR. SILETS: Your Honor, I would like to be heard
21 just for a moment on this proposition. I think -- I don't
22 have the authorities before me, but I think the authorities
23 do establish, without any doubt, that the proposition of law
24 is that the presumption of innocence exists throughout each
25 step of the proceedings until the very moment the jury goes

1 into the jury room, after having been instructed by the Court
2 on the law, and then, as Mr. Branstetter indicates, the
3 government's evidence must overcome beyond any reasonable
4 doubt that presumption.

5 But to the issue at hand --

6 THE COURT: (Interposing) I am inclined to give
7 this, I mean to inquire of the jury. I don't mean to
8 terminate your argument, but the Court is disposed to consider
9 this request.

10 MR. SILETS: Thank you, your Honor.

11 MR. NEAL: Your Honor, I feel so strongly that
12 this has been charged once, I wonder if you would want to
13 wait and read the transcript on it?

14 MR. SILETS: Well, we are willing for the Court to
15 adjourn as Mr. Neal suggests that the Court should examine
16 the transcript and review as to each of the some twenty-odd
17 veniremen who have been placed in the box.

18 THE COURT: Well, I think that it has been
19 generally covered. I can see no -- well, all right. Anything
20 further?

21 MR. BRANSTETTER: Not on this particular matter,
22 may it please the Court. I would like to challenge a juror
23 for cause.

24 THE COURT: All right.

25 MR. BRANSTETTER: If the Court will recall that Mr.

1 John B. Arp, I believe he sat over on the end back row, Mr.
2 Arp was the gentleman.

3 THE COURT: What is his number, do you have it?

4 MR. BRANSTETTER: Yes, it's 156, may it please
5 the Court.

6 THE COURT: All right.

7 MR. BRANSTETTER: This is the gentleman from
8 Cleveland, Tennessee, who stated that he now had a deputy
9 sheriff's commission for that county and that he also carried
10 a -- some sort of a commission from the city police.

11 There is no contention on the part, on my part
12 at this time that the commission from the city police would
13 constitute an exemption for him, but there is a contention,
14 may it please the Court, that the fact that he is a deputy
15 sheriff comes within the concept of our discussions yesterday
16 on another juror. It comes in because of this, even though
17 he is not actively engaged from day to day in performing the
18 functions as a deputy sheriff, he is, nonetheless, under the
19 laws of the State of Tennessee, subject to being called for
20 either the service of processes at any time, for which he
21 would be paid on a commission basis in that particular county,
22 or he may be called to perform any special service that the
23 sheriff may desire or need to be performed at any time, day
24 or night, and be paid for this service, either on a commission
25 fee basis or paid out of the sheriff's fund.

1 We think that this constitutes him an official
2 in the sense that he is truly a deputy sheriff and that he
3 should be excused for cause.

4 MR. HOOKER: We would have no objection to the
5 challenge being sustained.

6 THE COURT: All right. In that event the
7 challenge for cause of Mr. Arp will be sustained.

8 All right. Anything further before we call the
9 panel back in?

10 MR. SCHIFFER: Your Honor, did you want me to
11 take this matter up with the Court before the jury came in?

12 THE COURT: Yes, if you desire to take it up at
13 this time.

14 MR. SCHIFFER: As your Honor knows, during the
15 recess, luncheon recess this afternoon I served your Honor
16 with a copy of the petition for writ of mandamus and a
17 memorandum of law in support of the petition and the original
18 and the requisite copies of this petition to the United States
19 Court of Appeals for the Sixth Circuit is en route at this
20 moment by air to that court in Cincinnati.

TK 23 End 20
TK 24 fls

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1 MR. SCHIFFER: In view of the fact that we have
2 challenged the array, the substance of the petition as I
3 have related earlier today.

4 THE COURT: Yes, I have read the petition, Mr.
5 Schiffer.

6 MR. SCHIFFER: I thought I might acquaint
7 Government counsel, you see.

8 THE COURT: All right.

9 MR. SCHIFFER: With the mere outline. We are
10 asking the United States Court of Appeals for the Sixth
11 Circuit to enter an order to show cause why there should not
12 be a hearing for the writ directly and commanding this
13 Court to vacate its order of January 20, 1964 refusing to
14 grant a hearing on the petitioner's motion challenging the
15 array of the petit jurors. That after a hearing on the
16 mandamus, a mandamus or prohibition issue to this court to
17 vacate the order of January 20th and permitting us a hearing
18 to challenge the array.

19 I have submitted with the motion papers and the
20 petition a memorandum of law. In view of the fact that
21 this will be in the Court's hands in Cincinnati this
22 afternoon as we expect, and Your Honor is acquainted with
23 the substance of the petition itself, we feel the memorandum
24 of law is so conclusive on the state of the law and the
25 very last word of the Supreme Court of the United States on

1 this subject we believe to be paramount on the subject would
2 it not then be most apropos at this time, Your Honor, and I
3 so respectfully move that we curtail this proceeding to
4 permit the Court an opportunity in Cincinnati to weight the
5 various items mentioned in this petition. We may have an
6 emergency hearing on Saturday.

7 I have been advised that it is generally customary
8 on these matters that the court may, of course, act on the
9 papers themselves. However, since it does involve a
10 constitutional issue, the court has sat in Cincinnati as
11 they had on my last mandamus application a week ago on
12 Saturdays.

13 And so I would ask Your Honor out of the deference
14 to the Court above and to this Court and yourself, of course,
15 to defer any further action in this case until next Monday
16 by which time we expect the Court of Appeals will have acted
17 on this petition. It may very well be we are at this very
18 moment conducting a proceeding which is completely uncon-
19 stitutional and contrary to law.

20 THE COURT: I believe that motion and request should
21 be denied. Now, then, may we have the panel returned.

22 (Thereupon, the panel was brought into the
23 courtroom.)

24 THE COURT: One moment, ladies and gentlemen, I
25 have sent after a paper. Let's be in recess about one minute

1 until I get the paper.

2 (Thereupon, a recess was taken and thereupon
3 Court convened about a minute recess.)

4 THE COURT: Ladies and gentlemen, at the conclusion
5 of this case, the Court will charge you with respect to the
6 law in certain matters. The Court will charge you fully at
7 that time as to the law that you should follow.

8 As you have been advised, there are six defendants
9 that are charged in one or more counts of an indictment.
10 The Court will instruct you at the conclusion of the trial
11 and no doubt at various times throughout the trial should you
12 sit as a juror on this case that each defendant is to be
13 tried separately. His case, he is entitled to have his case
14 tried and considered separately and apart from the case of
15 each other defendant. And you will be called upon to pass
16 upon the innocence or the guilt of each defendant separately.

17 If the Court instructs you in that manner, is
18 there any juror who would feel that he could not perform that
19 function and comply with those instructions of the Court?

20 Likewise, the Court will at the conclusion of the
21 case instruct you about other matters of law including such
22 matters as that the defendants are, each of them, presumed
23 to be innocent of the offense of which they are charged and
24 that this presumption of innocence would continue until and
25 unless it has been overcome by evidence that establishes the

1 guilt of each defendant beyond a reasonable doubt.

2 And that the government has the burden of proving
3 the case sufficiently to convince the jury of the guilt of
4 each defendant. The indictment standing alone is not to be
5 considered as evidence of guilt but is merely a form to
6 bring the case into court.

7 If the Court gives you such instructions or more
8 fully instructs you upon those matters at the conclusion of
9 the case, would there be any juror that would have any
10 question but what he could follow the instructions of the
11 Court in that respect?

12 I take it by your silence that your response is
13 affirmative to each of those inquiries.

14 If you will, please, step out again.

15 (Thereupon, the venire was excluded from the
16 courtroom.)

17 THE COURT: Now, then, may we have the 10 jurors
18 who were selected yesterday whose voir dire had been
19 completed yesterday, will you call their names off in the
20 order in which they were originally called, Mr. Dale?

21 THE CLERK: No. 111, George H. Baber, Jr.

22 No. 193, Patrick J. Haverty.

23 No. 123, Grady Jones.

24 No. 107, Marvin H. Vick.

25 No. 108, Irvin L. Huber.

1

No. 196, Thomas Kendall Wood.

2

No. 127, E. D. Case.

3

THE COURT: What was the number of Mr. Case?

4

THE CLERK: No. 127, Your Honor.

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No. 114, Vallie Colvin Jones.

6

No. 104, Mrs. Sam Oliver.

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No. 145, Lake Liner.

End

Tk 24

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Tk 25

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1 THE COURT: All right. Now, will you call the
2 first two jurors who have been examined this morning and not
3 otherwise excused?

4 MR. DALE: No. 155, Edsel Morrison.

5 No. 153, J. D. Starnes.

6 THE COURT: Now, then, lady and gentlemen, so
7 that we may all renew our acquaintance with you and place
8 in our minds and in the minds of counsel the respective
9 jurors now seated in the box, as I call your names would you
10 mind standing, please, and then be seated?

11 (The members of the panel stood as their names
12 were being called by the Court.)

13 THE COURT: Mr. George H. Baber.

14 MR. BABER: Here, sir.

15 THE COURT: All right. Mr. Patrick J. Haverty.
16 Mr. J. Grady Jones. Mr. Marvin H. Vick. Mr. Irwin L. Huber.
17 You may be seated, Mr. Vick. Thank you. Mr. Irwin L. Huber.
18 Mr. Thomas Kendall Wood. Mr. Ellis D. Case. Mr. Vallie
19 Colvin Jones. Is that Vallie Colvin Jones?

20 MR. JONES: Yes, sir.

21 THE COURT: Mr. Jones, Colvin Jones. Mrs. Sam
22 Oliver. Mr. Lake S. Liner. Mr. Edsel V. Morrison and Mr.
23 Joe Douglas Starnes.

24 All right. Any reason why the jury should not
25 at this time be excused? All right. If you will, step out

1 again, please.

2 (The panel of 12 referred to above was excluded
3 from the courtroom.)

4 THE COURT: Under the order of the Court with
5 reference to the exercise of peremptory challenges, it would
6 be appropriate at this time that the government should
7 exercise any peremptory challenges.

8 MR. HOOKER: Has the state passed them back to
9 us? I didn't understand, I mean the defense passed them
10 back to us?

11 THE COURT: It was in the hands of the defendants
12 last evening when we recessed. Do the defendants desire to
13 move first in this respect?

14 MR. HOOKER: I didn't understand that they had
15 indicated.

16 MR. BERKE: We will wait for the government, we
17 will be polite to them this time. You are first.

18 THE COURT: I had assumed as much.

19 MR. REDDY: Had they finished their challenges
20 last night?

21 THE COURT: Well, they have exercised such
22 challenges, I assume, as they desire to exercise at this
23 time and under the order of the Court is there any mis-
24 understanding about that order?

25 MR. HOOKER: Your Honor, indulge us just a moment?

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THE COURT: Certainly.

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MR. HOOKER: May it please the Court, the government will challenge Juror No. 107, Mr. Marvin H. Vick.

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THE COURT: All right. Mr. Vick will be excused. Any others?

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MR. HOOKER: No, sir.

7

8

THE COURT: All right. The defendants, now, if you wish for me to call on each defendant individually.

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MR. SILETS: Your Honor, I think that we have decided to pool our challenges because of the Court's order limiting us to only two apiece.

11

12

THE COURT: All right.

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14

MR. SILETS: It is our position that that is insufficient but as long as it is insufficient that we will take advantage of trying to pool them.

15

16

THE COURT: All right, that is perfectly agreeable.

17

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MR. SCHIFFER: Does your Honor fill the box now with the one?

19

20

THE COURT: Oh, yes. We will call the next juror. Do you wish to have that jury returned to the courtroom for any purpose?

22

23

MR. SCHIFFER: No, sir.

24

MR. BERKE: I think it might be helpful.

25

MR. HOOKER: No, sir, we don't care.

1 THE COURT: We will proceed each time there is
2 a vacancy, we will fill that vacancy with the next juror or
3 as long as there are jurors whose voir dire has been completed.

4 MR. BERKE: If it is not too much inconvenience,
5 your Honor, we would like for that juror just to step in for
6 a moment to be sure that we have the one right placed, that
7 we do not make a mistake on the name. If there is no objec-
8 tion to that.

9 MR. HOOKER: No objection from our standpoint.

10 THE COURT: All right. Just have them line up
11 here rather than attempting to take--

12 MR. BERKE: (Interposing) No, just that one.

13 THE COURT: Oh, that one.

14 MR. BERKE: Yes.

15 THE COURT: All right.

16 MR. BERKE: We are not asking for all of them
17 back in, just that one.

18 MR. DALE: 141, Irvin Morris Shipley.

19 MR. SILETS: Your Honor, according to my tally--

20 THE COURT: (Interposing) Just a moment.

21 MR. BERKE: Mine shows--

22 THE COURT: (Interposing) The Court's records
23 indicate that it would be--

24 MR. BERKE: (Interposing) Stewart might have
25 been excused by the Court.

1 THE COURT: No. My records would indicate that--
2 just a moment, have the juror wait outside just a moment--
3 that Edsel D. Morrison and Mr. Starnes were placed on this
4 panel and that the next juror would be Marshall Stewart.

5 MR. NEAL: He was excused.

6 MR. DALE: He was excused, your Honor.

7 THE COURT: Oh, yes. The next juror then would
8 be Mr. Shipley, that's correct.

9 MR. DALE: Yes, your Honor.

10 THE COURT: Irvin M. Shipley. All right. Will
11 you have Mr. Irvin M. Shipley step in the courtroom for a
12 moment?

13 (Thereupon, Mr. Shipley was brought into the
14 courtroom.)

15 THE COURT: Just stand right here, Mr. Shipley.
16 Everyone just wanted to be sure that they just recalled
17 exactly who you were and further identify you. All right.

18 (Thereupon, Mr. Shipley was excluded from the
19 courtroom.)

20 MR. HOOKER: We will pass.

21 MR. SILETS: Your Honor, is my tally correct,
22 the government has used three challenges?

23 MR. HOOKER: That is correct.

24 THE COURT: Just a moment.

25 MR. HOOKER: That is correct, yes.

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THE COURT: All right. According to the Court's record the government has used three peremptory challenges, one peremptory challenge was used on behalf of Mr. Campbell and one on behalf of Mr. King. There would, therefore, be ten peremptory challenges remaining for the defendants.

End Tk 25 6

Tk 26 fls.

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1 THE COURT: Which it is the understanding of the
2 Court are to be pooled.

3 MR. BERKE: If your Honor please, on behalf of
4 the defendant Mr. Hoffa we would like to excuse a juror.

5 THE COURT: This is not only on behalf of one
6 defendant, this is on behalf of all defendants?

7 MR. BERKE: Yes, your Honor.

8 THE COURT: All right.

9 MR. BERKE: That will be No. 141, Mr. Shipley.

10 THE COURT: All right, Mr. Shipley will be
11 excused. Call the next juror in sequence.

12 THE CLERK: No. 198, your Honor, John A. Kilgore.

13 THE COURT: All right, have Mr. Kilgore come in.

14 (Thereupon, the venireman was brought into the
15 courtroom.)

16 THE COURT: All right, thank you, Mr. Kilgore.
17 We just wanted to be sure we remembered who you were.

18 (Thereupon, the venireman was excluded from the
19 courtroom.)

20 THE COURT: Does the defendants pass back now to
21 the government?

22 MR. SILETS: Yes, sir.

23 THE COURT: Is there anything further from the
24 government? Any further challenges on behalf of the govern-
25 ment?

1 MR. HOOKER: We pass.

2 THE COURT: All right.

3 MR. BERKE: If your Honor please, we will challenge
4 Mr. Baber.

5 THE COURT: Do you have the number on this, sir?

6 THE CLERK: No. 111, your Honor.

7 THE COURT: And the name?

8 THE CLERK: No. 111, George H. Baber, Jr.

9 THE COURT: All right, Mr. Baber will be excused.

10 Call the next juror in sequence.

11 THE CLERK: No. 185, Harry W. Tyler.

12 (Thereupon, the venireman was brought into the
13 courtroom.)

14 MR. NEAL: May we get a count on the challenges
15 now? There have been four challenges by the defendants?

16 MR. SCHIFFER: All right.

17 THE COURT: Just a moment. Mr. Tyler, we just all
18 wanted to get acquainted with you again to be sure that we
19 remembered who you were. We appreciate your coming back in.
20 You may step out now.

21 (Thereupon, the venireman was excluded from the
22 courtroom.)

23 MR. SILETS: Your Honor, I move to strike Mr.
24 Tyler for cause. Mr. Neal in his presence told him how many
25 challenges the defense had used. If he stays on this panel,

1 it can be reasonably expected that he will explain to the
2 other jurors the fact that the defense has stricken four
3 different individuals. It was certainly out of order.

4 MR. HOOKER: Why, there couldn't be any merit in
5 that, if your Honor please. No juror would understand any
6 such thing as that.

7 MR. BRANSTETTER: If the Court please, if the
8 juror doesn't understand that we certainly don't want him
9 serving on this jury.

10 MR. REDDY: There was no indication that the
11 juror even heard it, your Honor.

12 MR. SILETS: Well, if he didn't hear that, if
13 your Honor please --

14 THE COURT: Well, the Court heard it. Just a
15 moment, I have it under advisement.

16 MR. BRANSTETTER: I would respectfully state to
17 the Court that we don't know exactly how to proceed as long
18 as this is under advisement because it might be --

19 THE COURT: I am going to take it out from under
20 advisement in just a moment just as soon as I can finish
21 making my notes.

22 MR. BRANSTETTER: All right, thank you, sir.

23 THE COURT: I will overrule the motion by the
24 defendant.

25 MR. NEAL: I would like to state, your Honor, that

1 I did not know, of course, that the man was in the courtroom.

2 THE COURT: Let's be careful what we say, gentle-
3 men, while any juror is in the courtroom.

4 MR. HOOKER: Is it our turn now? The defense
5 have used four and we have used three, is that correct?

6 THE COURT: According to the Court's record, the
7 defendants have used four challenges at this time and the
8 defendants exercised the last challenge.

9 MR. HOOKER: We pass.

10 THE COURT: The government passes.

11 MR. HOOKER: The government passes.

12 THE COURT: It again passes to the defendants'
13 hands.

14 MR. BERKE: If your Honor please, the defendants
15 will excuse Mr. Huber.

16 MR. NEAL: What is the number?

17 MR. HAGGERTY: No. 108.

18 THE CLERK: No. 108.

19 THE COURT: No. 108. Is the next juror in the
20 order, Mr. McCampbell? Is that correct?

21 THE CLERK: No. 182, Charles A. McCampbell.

22 (Thereupon, the venireman was brought into the
23 courtroom.)

24 THE COURT: Mr. McCampbell, we have asked you to
25 come back so everybody could recall exactly who we were con-

1 sidering at this time and have the opportunity of renewing
2 our acquaintance. All right, sir, if you will, step out.

3 (Thereupon, the venireman was excluded from the
4 courtroom.)

End TK 26
TK 27 fls

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Wood.

THE COURT: What does the government say?

MR. HOOKER: Government passes.

MR. BERKE: The defendant will challenge Juror

THE COURT: The number?

MR. DALE: 196.

MR. BERKE: 196, Your Honor.

THE COURT: Call the next juror.

MR. DALE: 181, William Link.

THE COURT: Have Mr. Link come in.

(Thereupon, Mr. Link was brought into the courtroom.)

THE COURT: Mr. Link, we again just desire to
renew our acquaintance with you so we could recall exactly
who was under consideration at this time and asked that you
come back for that purpose so the attorneys could have the
opportunity of recalling.

Thank you very much, sir.

(Thereupon, Mr. Link was excluded from the courtroom.)

THE COURT: All right. What does the government
say?

MR. REDDY: Government passes.

MR. HOOKER: Government passes.

MR. ALEXANDER: We will excuse Mr. Larry Tyler,
185.

MR. REDDY: What was the number?

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MR. ALEXANDER: 185, Larry Tyler.

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THE COURT: All right. The next juror.

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MR. DALE: 159, Hoyle F. Albritton.

4

THE COURT: The last juror who was excused was

5

Mr. Tyler.

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MR. DALE: 185, Your Honor.

7

MARSHAL SERTEL: Let's have quiet in the courtroom,

8

please, no whispering.

9

THE COURT: Call Mr. Albritton.

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(Thereupon, Mr. Albritton was brought into the

11

courtroom.)

12

THE COURT: Mr. Albritton, we had asked to have

13

you come back just a moment so that everyone could recall

14

just who you were and renew your acquaintance and so counsel

15

could have the opportunity to do so.

16

All right, if you will, step out again, please,

17

sir.

18

(Thereupon, Mr. Albritton was excluded from the

19

courtroom.)

20

MR. BRANSTETTER: May it please the Court--

21

THE COURT: Yes, sir.

22

MR. BRANSTETTER: Could I request to the Court that

23

the Court ask this particular juror if he is a deputy

24

sheriff. I was absent when the Court was asking that question

25

and I want to make sure of the correct information.

1 THE COURT: All right. Have him come back a moment.
2 (Thereupon, Mr. Albritton was brought into open
3 court.)

4 THE COURT: Mr. Albritton, the Court has been
5 requested to ask are you a deputy sheriff?

6 MR. ALBRITTON: No, sir.

7 THE COURT: All right. That will be all. Thank
8 you.

9 (Thereupon, Mr. Albritton was excluded from the
10 courtroom.)

11 THE COURT: All right. What does the government
12 say?

13 MR. HOOKER: Government passes.

14 MR. NEAL: Is that eight challenges for the
15 defendants?

16 THE COURT: Seven.

17 MR. BERKE: The defendant will challenge Mr.
18 Albritton.

19 THE COURT: Albritton.

20 MR. DALE: 159, Your Honor.

21 THE COURT: Call the next juror.

22 MR. DALE: 110, Hal W. Bullen.

23 MR. HOOKER: What is the number?

24 MR. DALE: 110, 1-1-0.

25 (Thereupon, Mr. Bullen was brought into the courtroom.)

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THE COURT: Mr. Bullen, we have asked you to come back just a moment so that everyone could get acquainted with you again and recall just who we were considering at this time.

Thank you very much.

(Thereupon, Mr. Bullen was excluded from the courtroom.)

MR. ALEXANDER: If it please Your Honor--

THE COURT: (Interposing) One moment. Just a minute, gentlemen, let me get my records straight.

MR. HOOKER: Government passes.

THE COURT: All right.

MR. BERKE: If Your Honor please, the defendant will challenge Juror McCampbell.

MR. DALE: No. 182.

THE COURT: 182?

MR. DALE: Yes, Your Honor.

End
Tk 27

Tk 28
follows

1 THE COURT: All right, call the next juror in
2 sequence.

3 THE CLERK: No. 121, Bruce Ringer.

4 MR. HOOKER: This is the next one?

5 THE COURT: This is the next juror called.

6 MR. HOOKER: What is the number?

7 THE CLERK: No. 121, Bruce Ringer.

8 (Thereupon, the venireman was brought into the
9 courtroom.)

10 THE COURT: Mr. Ringer, we have asked you to step
11 back just a moment so all of us could become acquainted again
12 and recall who we were attempting to identify. All right,
13 will you step out?

14 (Thereupon, the venireman was excluded from the
15 courtroom.)

16 THE COURT: What does the government say?

17 MR. HOOKER: The government passes.

18 THE COURT: All right.

19 MR. BERKE: If your Honor please, what does the
20 Court's records show now?

21 THE COURT: 1, 2, 3, 4, 5, 6, 7, 8, and 9.

22 MR. BERKE: If your Honor please, I don't know
23 that we've kept very good bookkeeping. Could we have just a
24 little recess to see what we have left?

25 THE COURT: Would you care for me to call my

1 records?

2 MR. BERKE: We would appreciate that.

3 THE COURT: My record reflects, Mr. Berke, that
4 you have excused in this order?

5 MR. BERKE: No, we want to know what is left, not
6 what is left. We don't care what we have used. We want to
7 know what is left.

8 THE COURT: Do you mean what jurors are left?

9 MR. BERKE: That's right. All right, they seem
10 to want the complete record if it is not too much trouble,
11 what was stricken and also what is left. Right?

12 MR. SILETS: Yes, sir.

13 MR. BERKE: You have excused No. 141, Mr.
14 Shipley.

15 No. 111, Mr. Baber.

16 No. 108, Mr. Huber.

17 No. 196, Mr. Wood.

18 And No. 159, Mr. Albritton.

19 And No. 182, Mr. McCampbell.

20 My record reflects that on behalf of Mr. Campbell,
21 Mrs. Gilliland, No. 117, was excused.

22 On behalf of Mr. Tweel, No. 185, Mr. Tyler, was
23 excused.

24 On behalf of Mr. King, No. 189 -- I am unable to
25 read my own handwriting.

1 MR. HOOKER: Mr. Gordon.

2 THE COURT: Mr. Gordon was excused, for a total
3 of nine challenges.

4 MR. HOOKER: No. 9 is Mr. Stewart.

5 MR. NEAL: It was Mr. Gordon, your Honor. I
6 don't think that is the right number.

7 THE COURT: There are a total of nine challenges
8 exercised by the defendants at this time according to my
9 records. Am I correct?

10 MR. SCHIFFER: Yes, sir.

11 MR. SILETS: Yes, sir.

12 MR. NEAL: Correct.

13 THE COURT: And three challenges exercised by
14 the government.

15 THE CLERK: Yes, sir, nine and three.

16 THE COURT: Any further requests?

17 MR. BERKE: Do you want what is left?

18 MR. HAGGERTY: Only one left.

19 MR. BERKE: I mean, twelve jurors sitting --

20 MR. HAGGERTY: No, we have those.

21 MR. BERKE: All right. Could we just have a
22 few moments, if your Honor please? I think we have moved
23 along rather rapidly and we would like to consult a few
24 minutes.

25 THE COURT: All right, let's take a five-minute

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1 recess.

End TK 28
TK 29 fls

(Thereupon, at 3:15 o'clock, a recess was taken.)

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1 MR. SILETS: Your Honor, I would like to make
2 a motion, if the Court please.

3 THE COURT: All right.

4 MR. SILETS: Under Title 28, Section 1862 it is
5 stated as follows:

6 "The following persons shall be exempt from jury
7 service:"

8 And then under Paragraph 3, "Public officers in
9 the executive, legislative or judicial branches of the
10 government of the United States or any state, district,
11 territory or possession or subdivision thereof, who are
12 actively engaged in the performance of official duties."

13 It has been called to my attention and I speci-
14 fically asked these questions of Mr. Grady Jones:

15 "Question. Are you considered a public officer
16 of your county?

17 "Yes.

18 "Would that be a part of the executive, legis-
19 lative or judicial branch of the county?"

20 He answered, "I believe executive."

21 I asked, "Are you currently actively engaged in
22 the performance of your official duties?

23 He said, "Yes."

24 He has fit all of the qualifications required
25 under Subdivision 3, Section 1862, Title 28 and he is also

1 exempt in the same fashion as a member of the police depart-
2 ment is exempt.

3 You recall he was the gentleman who was on the
4 jury commission, he was a jury commissioner.

5 THE COURT: All right. What do you say for the
6 government?

7 MR. NEAL: Your Honor, again if he is, I am not
8 sure that he would be considered an official. I don't think
9 he would but if he is it's an exemption again not a dis-
10 qualification. Moreover, your Honor, I would like to point
11 out this comes at an unduly untimely stage.

12 I remember distinctly your Honor pointing out
13 that all challenges for cause up to that point should be
14 made at a certain time. Now, that is in the transcript, I
15 can't cite--

16 THE COURT: (Interposing) That may be in the
17 transcript but I think the parties have a right to challenge
18 for cause at any time until the jury is completed, if there
19 is good cause.

20 MR. NEAL: Well, your Honor, this is certainly
21 not good cause. This is an exemption in the statute, if
22 that man comes within it, and I doubt that he comes within
23 it, but this is not a disqualification, this is not a chal-
24 lenge for cause, this is an exemption.

25 The man has been here now for days. Even if he

1 came within that it would be no exemption or no challenge
2 for cause.

3 Respectfully and most earnestly, your Honor, we
4 object to any challenge for us on Grady Jones at this time,
5 he is not challengeable for cause.

6 MR. HOOKER: I don't believe he falls within
7 that section, if your Honor please. Here is a man that is
8 just a jury commissioner there that I take it, just like in
9 most counties, at stated intervals he participates in the
10 selection of a jury.

11 I don't think he is an officer of the state or
12 county, or city, as the case may be, within the meaning of
13 that Subsection 3 of Section 1862 of U. S. C. A.

14 I think that is where the proposition is, that
15 he doesn't come within that category.

16 THE COURT: All right. Anything else?

17 MR. BRANSTETTER: May I suggest to preserve time,
18 I believe under the uniform jury act that was passed appli-
19 cable to all counties in the State of Tennessee with the
20 exception of possibly three or four that they were designated
21 as officials, public officials, is my recollection, I am
22 stating this from recollection.

23 THE COURT: All right. Let's be in recess a few
24 moments, gentlemen, and we will look this question up.

(Thereupon, a recess was had.)

1 (Thereupon, after recess, Court was in session.)

2 THE COURT: All right, is there anything further
3 with regard to this?

4 MR. HOOKER: Nothing for the government.

5 THE COURT: Gentlemen, I'm going to resolve any
6 doubt on this in favor of allowing the challenge for cause
7 as to Mr. Jones. So, Mr. Jones will be excused.

8 MR. REDDY: What is his number?

9 THE COURT: No. 123. All right, do you care to
10 have Mrs. Guinn come back in?

11 MR. BERKE: No, Your Honor.

12 THE CLERK: No. 105.

13 THE COURT: Does the government request that she
14 come back in?

15 MR. HOOKER: No, sir. She takes Mr. Jones' place
16 and that makes a full jury.

17 THE COURT: All right, just a moment now.

18 MR. BERKE: That's right.

19 MR. NEAL: Your Honor, I don't like to--, would
20 the Court indulge me to cite a case on that, on the exemption
21 not being a disqualification, a personal privilege may be
22 claimed or waived? I think it might be right on point.

23 THE COURT: All right.

24 MR. NEAL: It is United States versus Lee, 15 D.C.
25 489, 54 American Reporter.

1 THE COURT: 15 what?

2 MR. NEAL: 15 D. C. 489, Your Honor. District of
3 Columbia. It is a District of Columbia case in 1886. Would
4 Your Honor want to consider that?

5 MR. SILETS: Your Honor, may I respond?

6 THE COURT: What is the citation to it in the
7 reporter system?

8 MR. NEAL: It is in the Federal Digest, Your Honor,
9 and it reads as follows: District of Columbia, 1886.
10 Exemption from jury duty is not a disqualification to act as
11 a jurymen. It is a personal privilege which may be claimed
12 or waived. United States versus Lee. Now even under the
13 contention made by Mr. Silets this man could claim an
14 exemption only. Even under the statute taking the best of
15 his position, Your Honor, he could claim an exemption to act
16 in this case but according to this case and I have not read
17 the case, I found the headnote here, and I call it to Your
18 Honor's attention.

19 MR. SILETS: I believe the Court has ruled.

20 THE COURT: Yes, I think this ruling of the Court
21 should stand.

22 MR. HOOKER: How many challenges, may I inquire?

23 THE COURT: Yes, sir. Just a moment, Mr. Hooker,
24 let me straighten out my records now.

25 MR. HOOKER: They have three and we have three left?

1 THE CLERK: Right.

2 THE COURT: Mr. Jones' number is what?

3 THE CLERK: No. 123, Your Honor.

4 MR. HOOKER: Mrs. Guinn took his place, right?

5 THE CLERK: Right. No. 105, Mrs. Guinn.

6 THE COURT: All right.

7 MR. HOOKER: Just a moment, if Your Honor please.

8 THE COURT: All right, yes, sir.

9 MR. NEAL: It is your time.

10 MR. BERKE: No, it is yours.

11 MR. NEAL: Your Honor, they haven't exercised a
12 peremptory challenge. They struck Mr. Jones for cause.

13 THE COURT: Well, he is stricken and out of the
14 panel and now the panel--, there are 12 in the panel. The
15 defense if they desire to exercise a challenge at this time
16 would have the right to do so.

17 MR. NEAL: Otherwise, we have a jury?

18 THE COURT: No, sir. No, sir. If the defendants
19 desire to exercise any challenges, if not, it will pass back
20 to the government and come back to the defendants.

21 MR. BERKE: We do not at this time, Your Honor.

22 THE COURT: All right.

23 MR. HOOKER: The government passes.

24 THE COURT: All right, what do you say for the
25 defense?

1 MR. BERKE: The defendants will challenge Juror
2 Ringer, Your Honor.

3 THE COURT: The number please?

4 THE CLERK: No. 121, Your Honor.

5 THE COURT: No. 121.

6 MR. REDDY: That is right, Bruce Ringer.

7 THE COURT: All right.

8 THE CLERK: That exhausts it.

9 THE COURT: According to the Court's records the
10 defendants have exercised now ten challenges and the
11 government three challenges.

12 The defendants have two challenges remaining and
13 the government three challenges remaining. We will need to
14 call 14 additional jurors.

15 MR. HOOKER: That is four alternates and one
16 regular juror?

17 THE COURT: We need one regular juror. We have
18 got five challenges. That would be six. We have got four
19 alternates and the four challenges and four alternates.

20 MR. HOOKER: That would be 10, wouldn't it?
21 One juror and four alternates is five?

22 THE COURT: One juror and five challenges would be
23 six for the regular panel.

24 MR. HOOKER: That's right.

25 THE COURT: And then we will need four alternates

v 30-5 .

989

1 and four challenges each more. Six and eight are fourteen.

2 MR. HOOKER: That's right.

3 End
tk 30

4 Tk 31
follows

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and four challenges each more. Six and eight are fourteen.

MR. HOOKER: That's right.

End
tk 30

Tk 31
follows

T. 31 - DC11

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THE COURT: Call fourteen additional jurors.

3

MR. DALE: 126, L. S. Lee, Jr.

4

THE COURT: 126.

5

MR. DALE: Yes, sir.

6

MR. REDDY: S. L. Lee, Jr.?

7

MR. SAULPAW: Yes.

8

MR. DALE: Lee.

9

THE COURT: All right.

10

MR. DALE: 134, Ernest W. Connell, Jr.

11

188, Raymond McConnell.

12

116, Eugene Howard Godfrey.

13

140, Howard L. Clark.

14

147, C. E. Rouse.

15

177, LaFitte F. Prigmore, Jr.

16

THE COURT: LaFitte what?

17

MR. DALE: Prigmore, Jr.

18

THE COURT: P-r-i-g?

19

MR. DALE: M-o-r-e. 176, George Blackwell Smith.

20

MR. REDDY: Junior?

21

MR. HOOKER: Junior, yes.

22

here.

23

MR. DALE: George Blackwell Smith is all I have

24

MR. HOOKER: It shows Junior on the list.

25

MR. DALE: Junior is right, your Honor. 103,

Mrs. Oza Akers (spelling) A-k-e-r-s.

1 No. 132, Mrs. Callie T. Key (spelling) K-e-y.

2 No. 133, Arnold Richard Janeway.

3 No. 163, Colonel Seabron Tate.

4 122, E. M. Deakins.

5 194, John Curbow (spelling) C-u-r-b-o-w.

6 That makes fourteen, your Honor.

7 THE COURT: All right. Before we send for those
8 fourteen jurors, is there any reason why these jurors that
9 remain can't recess and go back to the hotel if they desire
10 to go? Any other reason to keep them around here? All
11 right, let's have the jurors come in that we have now. It's
12 not necessary, gentlemen, you can stay there and have the
13 others come right in front.

14 (Thereupon, the panel referred to above was
15 brought into open court.)

16 THE COURT: Ladies and gentlemen, the Court will
17 not have any occasion to call upon you any further today
18 or any occasion to keep you here further, therefore, I was
19 going to permit you to go back to the hotel if you desire to
20 do so at this time.

21 Let me give these suggestions and instructions,
22 however:

23 Do not talk about this case among yourselves,
24 do not talk to anyone about the case. Keep yourself always
25 in the posture where that you can try this case if called

1 upon to be a juror in the case solely on the evidence in the
2 courtroom and on the instructions of the Court.

3 Now, there will be officers available to comply
4 with any reasonable accommodation that you may request for
5 your comfort and to run any errands that may be necessary in
6 that respect.

7 Those gentlemen are officers of the court, they
8 are not in any way parties to the prosecution of this defense
9 or parties to the defense of the case.

10 As I say, they are officers of the court and are
11 not in any way connected or not to be in any way connected
12 in the handling of the jury with either side of this lawsuit.

13 Are there any other matters? If there are no
14 other matters then, ladies and gentlemen, you may go at this
15 time and we will not keep you waiting around here for the
16 rest of the day.

17 Thank you very much.

18 (Thereupon, the panel members referred to above
19 were excluded from the courtroom.)

20 THE COURT: All right, may we have the other
21 fourteen jurors called in the courtroom?

TK 31 End
TK 32 fls

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25

1 THE COURT: Mr. Dale?

2 (Conference between the Court and the Clerk out-
3 side of the hearing of the reporter.)

4 (Thereupon, a venire of 14 was brought into the
5 courtroom.)

6 THE COURT: Ladies and gentlemen, you've had
7 quite a wait this week and all I can do is just apologize to
8 you for it. It has been necessary at this time to be used
9 in order that proper processes of the law might be followed
10 and in order that everyone might have their fair day in
11 court, and if you have been inconvenienced, and I'm sure you
12 have been inconvenienced, by this delay and by the fact that
13 you had to wait these several days since you were first
14 called as jurors, if you feel badly about that, feel badly
15 at the Court about it because certainly none of the parties
16 were in any way responsible for that.

17 It was the Court's decision to request that you
18 remain available. The only recompense as I mentioned to
19 some of the jurors this morning I have no medals to award.
20 I can't give you service stripes for the service that you
21 have already performed. The only recompense that I can give
22 is the fact that you have performed just by your presence
23 and your availability you have performed one of the highest
24 duties of citizenship and the satisfaction of knowing that
25 you have been called upon to perform that duty and have

1 performed it gracefully and willingly will have to be your
2 reward in this instance.

3 Ladies and gentlemen, the Court has decided in
4 this case that in order to assure a fair and impartial trial
5 to all parties in the case, that is, to assure that all of the
6 proper processes and proper protections of the law are
7 carried out that it would be appropriate that the jury remain
8 together throughout the trial of this case. That means that
9 the jury will be kept together each evening in a local hotel.

10 You, of course, would have the opportunity of
11 making any necessary arrangements if you were called to
12 serve on this jury in that regard with your family or your
13 business, and you would be permitted to make any necessary
14 and appropriate contacts during that period of time keeping
15 in touch with your family or with others and with other
16 necessary transactions; those contacts would have to be in
17 the presence of an officer of the court, but these officers
18 will be available to assist you in any way possible and to
19 make as comfortable as possible and as at least burdensome
20 as possible any service should you be called upon to serve.

21 With that knowledge, are there any jurors now
22 who feel that they cannot serve under those circumstances
23 or have any reason why they cannot serve?

24 I take it by your silence that there are no
25 jurors who feel that they cannot serve under those circum-

stances.

At this time I should like to address some questions to each of you generally. Can you hear me, the gentleman on the far end? Let's have those gentlemen move a little closer so that they can hear better. Mr. Hooker, I wonder if you would just mind moving around on this side of the table?

MR. HOOKER: Not in the least, Judge. I would kind of like to stay around there if I could.

THE COURT: Let me inquire first as to your general qualifications for jurors in this district and in this division.

This court is the United States District Court for the Eastern District of Tennessee. The jurisdiction of the Court extends roughly to the geographical area comprising East Tennessee. However, the court is divided into divisions and the division that we are particularly sitting in now is the Southern Division of the Eastern District.

In order to be eligible for jury service in this district you must be a resident of one of the eight counties that make up the Southern Division of this court. Those counties are Bledsoe County; Bradley County; Hamilton County; McMinn County; Marion County; Meiggs County; Polk County; Rhea County; and Sequatchie County.

Is there any member of this panel who are not

1 residents of one of those counties?

2 MR. REDDY: Your Honor, I think the count is
3 nine counties. You counted them right but--

4 THE COURT: That's correct, there are nine counties
5 in the district. I called off all of them, however.

6 MR. REDDY: You called them all off, yes, sir.

End Tk 32⁷
Tk 33 fls.

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1 THE COURT: Any member of this panel who is not
2 21 years of age?

3 Any member of this panel who is not a citizen of
4 the United States of America?

5 Any member of this panel who has served upon a
6 jury in the United States District Court within the past year,
7 immediate year past?

8 Ladies and gentlemen, the case that is for trial
9 at this time and in connection with which you are being
10 examined as a prospective juror is the case of the United
11 States of America versus James R. Hoffa, Larry Campbell,
12 Thomas Ewing Parks, Allen Dorfman, Nicholas J. Tweel, and
13 Ewing King.

14 In various counts of this indictment that will be
15 for trial these defendants or one or more of them are charged
16 in the respective counts with having violated the laws of the
17 United States involving corrupting, endeavoring to unlawfully
18 intimidate, impede the administration of justice within a
19 court of the United States, specifically the United States
20 District Court at Nashville, Tennessee. It is alleged in
21 the indictment that the offenses there charged occurred
22 during the months of October and November of 1962, that was
23 a year ago this past October and November.

24 Now, then, with that brief explanation I am going
25 to introduce each one of the defendants with their consent

1 and with the consent of their counsel and inquire if you are
2 in any way acquainted with any of them or in any way related
3 to any of them and while I am introducing the parties, if
4 that is agreeable with counsel, let's see, has Mr. Schiffer
5 stepped out?

6 MR. ALEXANDER: I think Mr. Schiffer stepped out
7 to use the telephone a moment, Your Honor.

8 THE COURT: All right. I think it would be
9 appropriate that we wait until his return.

10 MR. ALEXANDER: May I go see if I can find him and
11 speed him up?

12 THE COURT: Mr. Schiffer, I wanted to inquire at
13 this time if I might introduce the parties and also introduce
14 their attorneys. If that meets with the approval of the
15 parties and their attorneys.

16 The defendants in this case are Mr. James R. Hoffa
17 and Mr. Hoffa's attorneys are Mr. Harry Berke and Mr.
18 Haggerty. Mr. Harry Berke is an attorney of Chattanooga,
19 Tennessee, and Mr. Haggerty is an attorney of Detroit,
20 Michigan.

21 (Each person arose as his name was called.)

22 THE COURT: Mr. Larry Campbell. Mr. Campbell is
23 a resident of Detroit, Michigan, his attorney is Mr. Cecil
24 Branstetter, an attorney of Nashville, Tennessee.

25 Mr. Thomas Ewing Parks is a resident of Nashville,

1 Tennessee, and his attorney is Mr. Jacques M. Schiffer. Mr.
2 Schiffer is a resident of New York City.

3 Mr. Allen Dorfman is the next defendant. Mr.
4 Dorfman is a resident of Chicago and his attorney is Mr.
5 Harvey M. Silets, an attorney of Chicago.

6 The next defendant is Mr. Nicholas J. Tweel. Mr.
7 Tweel is a resident of Huntington, West Virginia, and his
8 attorneys are Mr. Dave Alexander, an attorney of Franklin,
9 Tennessee, and Mr. Henry Grady, an attorney of Chattanooga,
10 Tennessee.

11 The last defendant is Mr. Ewing King. Mr. King is
12 a resident of Nashville, Tennessee, and his attorney is
13 Mr. Harold Brown, an attorney of the city of Chattanooga.

14 The attorneys representing the United States, the
15 prosecution in this case, Mr. John Hooker of Nashville,
16 Tennessee, Mr. James Neal of Washington, D. C., and Mr.
17 Jack Reddy, United States District Attorney of this district
18 of Chattanooga, Tennessee. Now, then, with those introductions
19 may I inquire if any member of this panel is in any way
20 acquainted with or in any way related to either one of the
21 defendants in the case?

22 Is there any member of this panel in any way
23 acquainted with or in any way related to either of the
24 attorneys representing the prosecution in the case, Mr.
25 Hooker, Mr. Neal and Mr. Reddy?

1 MR. SMITH: I am acquainted with Mr. Jack Reddy
2 and play golf with him, he is a member of the same golf club.

3 THE COURT: Will you state your name, please?

4 MR. SMITH: George Blackwell Smith, Jr.

5 THE COURT: Mr. Smith, you say that you have played
6 golf with him?

7 MR. SMITH: Yes, it has been several years since
8 I have but he is still a member of the club.

9 THE COURT: And what club is that?

10 MR. SMITH: Lookout Mountain Golf Club.

11 THE COURT: Well, is that relationship or
12 acquaintanceship with Mr. Reddy such as to in any way
13 influence your participation in this case if you were
14 selected as a juror?

15 MR. SMITH: I don't think so.

16 THE COURT: Well, is there any question about that?

17 MR. SMITH: Beg your pardon, sir?

18 THE COURT: Is there any question about, would
19 there be any question in your mind about whether it would or
20 would not influence you in any way?

21 MR. SMITH: No, it would not.

22 THE COURT: All right. Have you ever employed
23 Mr. Reddy professionally?

24 MR. SMITH: No.

25 THE COURT: How long ago was it that you and he

1 may have played golf together?

2 MR. SMITH: Well, I think it has been several
3 years. I see him occasionally but I have not played golf
4 with him for, oh, about five years, I'd say.

5 THE COURT: All right. Anyone else now who is in
6 any way acquainted with either of the defendants or either
7 of the attorneys representing the plaintiff?

8 Are there any members of the jury who are
9 acquainted with any of the attorneys that the court has
10 introduced representing the various defendants in the case?

11 End
12 Tk 33

13 Tk 34
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1 THE COURT: All right, yes, sir, will you state
2 your name?

3 THE VENIREMAN: Ernest Connell. (Spelling by
4 the venireman) C-o-n-n-e-l-l.

5 THE COURT: Mr. Connell, which are the attorneys
6 are you acquainted with?

7 MR. CONNELL: I have done work for Mr. Berke.

8 THE COURT: What kind of work?

9 MR. CONNELL: Painting work.

10 THE COURT: I beg your pardon?

11 MR. CONNELL: Paint work. Painting.

12 THE COURT: And how long ago was that?

13 MR. CONNELL: I believe about three years ago,
14 now, sir.

15 THE COURT: How long a period of time did you
16 work for him?

17 MR. CONNELL: I think it was about a month,
18 probably about a month.

19 THE COURT: And that has been two years ago?

20 MR. CONNELL: About three years ago.

21 THE COURT: Have you had any occasion to consult
22 him professionally?

23 MR. CONNELL: No, sir.

24 THE COURT: Is that relationship with Mr. Berke
25 such as to in any way influence your participation in this

1 case if you were selected as a juror?

2 MR. CONNELL: No, sir.

3 THE COURT: Do you think that you could decide
4 this case solely on the evidence that you hear in the court
5 and the instructions of the Court?

6 MR. CONNELL: Yes, sir.

7 THE COURT: Irrespective of any acquaintanceship
8 you may have had in that regard?

9 MR. CONNELL: Yes, sir.

10 THE COURT: Yes, sir, what do you say?

11 VENIREMAN: Just how far do you mean, acquaintance,
12 speaking acquaintance, or what?

13 THE COURT: Yes, I just want to know if you know
14 any of these gentlemen, why let us know and let us know how
15 much you know about them?

16 MR. DEAKINS: I know Mr. Harold Brown just to
17 speak to him or to pass the time of day. Otherwise, but he
18 never has done any work for me or anything of that sort. I
19 just know him to speak to him.

20 THE COURT: And are you and he members of any
21 organization together? Anything that you are aware of?

22 MR. DEAKINS: Yes, sir.

23 THE COURT: What organizations?

24 MR. DEAKINS: The Elks Club.

25 THE COURT: Elks Club?

1 MR. DEAKINS: Yes, sir.

2 THE COURT: How long have you known Mr. Brown?

3 MR. DEAKINS: Oh, I have known Mr. Brown I guess
4 for five or six years, something like that.

5 THE COURT: Is there anything in your acquaintance-
6 ship with Mr. Brown that would in any way influence you in
7 the matter of serving on this jury if you were selected to
8 serve as a juror?

9 MR. DEAKINS: None whatever.

10 THE COURT: I beg your pardon?

11 MR. DEAKINS: None whatever.

12 THE COURT: Would you state your name, please,
13 sir?

14 MR. DEAKINS: E. M. Deakins (spelling by the
15 juror) D-e-a-k-i-n-s. The initials E. M.

16 THE COURT: Any other juror who is acquainted
17 with or related to either of the attorneys in the case?

18 Have any members of this panel any knowledge of
19 or any fact or purported fact that are in any way related to
20 the charges in this indictment?

21 Has any member of this jury formed or expressed
22 any opinion as to the guilt or the innocence of any defendant
23 in the case?

24 MR. CONNELL: Your Honor, I have stated several
25 times not in this particular case, anything about it --

1 THE COURT: Well, now, let's don't talk about
2 any --

3 MR. CONNELL: How I felt it should go.

4 THE COURT: Don't tell the Court what your
5 opinion is. Have you formed or expressed an opinion in the
6 case?

7 MR. CONNELL: Not this particular case, just what
8 we are relating to now, no, sir.

9 THE COURT: Well, do you have any opinion about
10 any matter that would in any way prevent your serving on the
11 jury and starting upon the trial of the case should you be
12 selected to try the case or sit on the jury without having
13 any preconceived notion or idea about the guilt or innocence
14 of any party to the lawsuit?

15 MR. CONNELL: I couldn't rightly say. I don't
16 think I could.

17 THE COURT: All right, I believe we'll excuse you,
18 sir, then.

19 THE CLERK: What is your name, please?

20 MR. CONNELL: Connell (spelling by the venireman)
21 C-o-n-n-e-l-l.

22 THE CLERK: No. 134.

23 ONE OF THE VENIREMEN: Pardon me, your Honor,
24 did you refer to reading about this case?

25 THE COURT: I will inquire about that later on,

1 yes, sir.

2 Have any of the members of this panel any
3 prejudice against any party to this lawsuit that would
4 prevent you from trying the case solely on the evidence
5 heard in the open court and upon the instructions of the
6 Court?

7 ONE OF THE VENIREMEN: Yes, sir, well, your
8 Honor --

9 THE COURT: Without stating what it is, do you
10 feel that you have a prejudice in the case?

11 MR. SMITH: Yes, sir, I do.

12 THE COURT: All right, you will be excused.
13 Your name, please, sir?

14 MR. SMITH: George Blackwell Smith, Jr.

15 THE COURT: Do any other members of this panel
16 have any sympathy for any party to this lawsuit that would
17 prevent your trying this case solely on the evidence and on
18 the instructions of the Court?

19 Does any member of this panel have any sympathy
20 for or any prejudice against the prosecution of this case?
21 Those participating in the prosecution that would in any way
22 interfere with your trying this case solely on the evidence
23 and the instructions of the Court?

24 MR. NEAL: Your Honor, would it be appropriate to
25 make a suggestion at this time?

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THE COURT: Yes, sir.

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TK 34 End
TK 35 fls

MR. NEAL: It would save time if the Court would call two more jurors in, since you are right at the start of your examination and we have a sufficient number then?

THE COURT: All right, let's call two additional jurors to fill the vacancies.

TK 35
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MR. DALE: 124, James F. Anderson.

2

THE COURT: All right.

3

MR. DALE: 195, Herman F. Moses.

4

THE COURT: All right. Will the officer ask those jurors to report?

6

(The two veniremen referred to above were brought in the courtroom.)

7

8

THE COURT: Gentlemen, the Court, as I have heretofore apologized to the other jurors for the delay in calling the fact that you gentlemen had to wait for quite some time in being called, I want to express my appreciation for your patience and your waiting in this respect has been necessary, if you have been inconvenienced, and, as I am sure you have, do not hold that against the parties to this lawsuit, it is the Court's responsibility and the Court has felt it necessary and appropriate to request you to wait.

16

17

Even in waiting you have rendered a very valuable service and one of the very highest forms of duties as a citizen.

18

19

20

Mr. Curbow and Mr. Deakins, is that correct, the last two gentlemen?

21

22

MR. REDDY: No, your Honor, Anderson.

23

THE COURT: No, Mr. Anderson.

24

MR. ANDERSON: Yes, sir.

25

THE COURT: And Mr. Moses are the last two

1 gentlemen that came up. Mr. Anderson, Mr. Moses, the Court
2 has concluded in this case that in the interest of having a
3 fair and impartial trial and the proper conduct of the trial
4 that the jury should remain together at all times until the
5 case has been tried and has been completed. That means that
6 the jurors will remain each evening at a local hotel here in
7 Chattanooga and will be attended by officers of the court
8 who will be there for any service that they might be able to
9 render.

10 You will be permitted to make any necessary
11 arrangements for such service. You will be permitted, of
12 course, to keep necessary contact with your family or with
13 others where necessary and appropriate, such contacts to be
14 in the presence of an officer of the court.

15 The Court has no way of knowing how long the
16 case may take for trial, it may take three to four weeks and
17 possibly longer, possibly shorter. The Court has no way of
18 knowing how long it may or short a time it may take to try
19 the case.

20 Now, with that explanation, is there any reason
21 that you feel that you have as to why you cannot serve if
22 selected to serve on this jury?

23 MR. ANDERSON: Judge, I have an invalid wife
24 that depends a great deal on me. She has been in a nursing
25 home in Cleveland four years this coming April and she doesn't

1 have any relatives or I don't either, you know, and the only
2 way that she can communicate with me is with her fingers, you
3 know.

4 THE COURT: All right.

5 MR. ANDERSON: She has to be fed.

6 THE COURT: You are Mr. Anderson?

7 MR. ANDERSON: I understand how to feed her
8 better than anyone.

9 THE COURT: Well, you will be excused, Mr. Anderson.

10 MR. ANDERSON: Thank you.

11 (Mr. Anderson was excused.)

12 THE COURT: All right. May we have another
13 juror called?

14 MR. DALE: 102, Oscar Lee Lockhart.

15 THE COURT: What was the last name called?

16 MR. SAULPAW: Lockhart, No. 102, Oscar Lee
17 Lockhart (spelling) L-o-c-k-h-a-r-t.

18 (Thereupon, Mr. Lockhart was brought into the
19 courtroom.)

20 THE COURT: Mr. Lockhart, first the Court wants
21 to apologize to you for any inconvenience that you have been
22 put to in the matter of having to wait these several days.
23 The Court has felt that it was necessary and certainly any
24 inconvenience that you have felt in that respect should not
25 in any way influence your feeling toward any party to this

35 - 4 •
1 lawsuit. The parties have done their best to represent the
2 clients and to proceed with this case and the Court, it was
3 the Court's decision to request that you remain available.

4 Mr. Lockhart, the Court has also decided in this
5 case that it would be appropriate that the jury should remain
6 together at all times in the trial of the case until the case
7 has been tried and has been decided. That means that the
8 jury will remain together in a local hotel each evening after
9 court has adjourned and will be attended by officers of the
10 court, who will be available to accommodate you in any
11 reasonable request for your comfort or convenience and also
12 for the matter of making necessary contact or necessary
13 arrangements that you might need to make for such service
14 or in keeping in touch with your family or with others who
15 may be necessary or appropriate.

16 Now, I notice that you list on your questionnaire
17 that you have a heart condition. Are you taking any medical
18 treatment for that?

19 MR. LOCKHART: Yes, sir, your Honor. I have
20 trips to the doctor, of course, he sometimes keeps me off
21 of medicine but recently I had a checkup and he did give me
22 some medicine but I am out now.

23 THE COURT: Who is your doctor?

24 A I do have from, say, a quarter to semi-annual
25 checkups with the doctor.

35 - 5

1 THE COURT: Who is your doctor?

2 MR. LOCKHART: Dr. Taylor.

3 THE COURT: Well, the Court has no way of knowing
4 just how long this case may last, it could run three or four
5 weeks or longer or possibly shorter than that, I have no way
6 of telling.

7 Is your health such that you feel that your
8 health would be adversely affected if you were asked to serve
9 in this case?

10 MR. LOCKHART: I do, your Honor.

11 THE COURT: All right. Well, you will be excused.

12 (Mr. Lockhart was excused.)

13 THE COURT: Call for an additional juror.

14 MR. DALE: 166, Jack Moore.

15 THE COURT: After we have talked briefly with
16 Mr. Moore, gentlemen, we will adjourn for today. I will
17 need to talk with the members of this panel considerably
18 longer before we would be able to excuse you so that we will
19 not attempt to conduct the examination of the jury any further
20 this evening after we have talked briefly with Mr. Moore.

21 The jurors who have not been called and who are
22 remaining may be excused at this time to report back at ten
23 o'clock in the morning.

24 MR. NEAL: May it please the Court--

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MR.NEAL: May it please the Court?

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THE COURT: Yes, sir. Is it not some matter that you can take up after the recess? Do you wish me to request delaying the excusing of jurors until after we take up some matters?

6

Mr. Moore, can you hear me, Mr. Moore?

7

MR. MOORE: Yes, sir.

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THE COURT: Just have a seat, please, sir.

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Mr. Moore, the Court has concluded in this case that it would be proper and appropriate to request the jury to remain together at all times during the course of the trial and until the trial is finally decided, the case is decided. It would be necessary, therefore, for the jury to remain in a local hotel here in Chattanooga here each night and be attended by officers of the court.

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If you should be selected, you would be permitted to make the necessary arrangements for such service and to make necessary and appropriate contacts with relatives and others that might be appropriate during the time of your service and such contact to be made in the presence of an officer of the court.

22

23

Is there any reason why you feel that you might not be able to serve under those circumstances?

24

25

MR. MOORE: Sir, I have an appointment for a physical examination the first Friday in next month.

1 THE COURT: All right, what age person are you?
2 I believe you list your age at 67?

3 MR. MOORE: 67, yes, sir.

4 THE COURT: I believe we'll excuse you, Mr. Moore.
5 Call the next one.

6 THE CLERK: No. 200, Mark Lloyd Stephens.

7 MR. NEAL: Your Honor, that is all I was going to
8 bring to Your Honor's attention. I remember this gentleman
9 did say when he was first called he had some difficulty in
10 hearing.

11 (Thereupon a venireman was brought into the court-
12 room.)

13 THE COURT: Mr. Stephens, you have been unduly
14 inconvenienced in that you were released and now called back
15 some time before adjournment.

16 MR. STEPHENS: Yes, sir.

17 THE COURT: I do want to extend the apology from
18 the Court for the inconvenience you suffered during the past
19 several days. I know that the matter of waiting gets
20 awfully tedious and boring. However, it has been necessary
21 to request that you wait and it was the Court's responsibility
22 for doing that. So, you certainly shouldn't feel anything
23 toward any party of this lawsuit or let that in any way
24 influence your judgment toward any party in the lawsuit.
25 But I do want to apologize to you and express my appreciation

1 for your remaining available as a juror.

2 Mr. Stephens, in this case the Court has decided
3 that it is necessary and proper and appropriate under all the
4 circumstances to secure a jury and impartial trial that the
5 jury should remain together at all times until the case has
6 been heard and decided. That means that the jury will remain
7 each evening at a local hotel and be attended and waited on
8 by officers of the court.

9 The Court has no way of knowing just how long the
10 trial of the case may last. It may last three or four weeks
11 or longer than that or shorter than that. But is there any
12 reason--, you, of course, would be permitted to make
13 necessary arrangements for such service if you should be
14 selected. You would be permitted to keep necessary contact
15 with your family and others in the appropriate presence of
16 an official of the court.

17 Is there any reason why under those circumstances
18 that you feel that you cannot serve?

19 MR. STEPHENS: No, Your Honor.

20 THE COURT: All right, well, we've gone a little
21 beyond the normal adjournment time and we have quite a number
22 of things that we want to talk to you ladies and gentlemen
23 about and to ask you about. These gentlemen are all very
24 much interested in learning all about you and so we will have
25 to ask that you remain together tonight and then we will get

1 back together at nine o'clock in the morning and continue

TK 36 End 2 our questions and answers at that time.

TK 36a fls

TK 36A

3 Now, then, during the evening or at any time when

4 you are in recess and not in the courtroom, please do not

5 discuss the case among yourselves, don't talk even among

6 yourselves or with anyone else about the case. Don't let any-

7 one talk to you about this lawsuit. Don't read about the

8 lawsuit, or listen to the newscasts or anything of that nature

9 about the lawsuit. Keep yourselves, in other words, in the

10 posture whereby that you can if called upon to serve as a juror

11 in the case, you can try this case solely on the basis of what

12 you hear right here in open court under the supervision of the

13 Court and in accordance with the instructions of the Court.

14 You can see and appreciate why it is necessary and

15 important that every lawsuit be tried and that this lawsuit

16 be tried solely on the basis of what is heard in open court

17 and not on the basis of any information that might be gathered

18 from any other source or information of which the parties in

19 the lawsuit would have no knowledge that you had.

20 You go with the officers and as I say, they will

21 be available to make your stay as comfortable as possible.

22 To meet any reasonable requests that you have of them. And

23 be with us then at nine o'clock in the morning. All right.

24 (Thereupon, the venire was excluded from the

25 courtroom.)

1 THE COURT: All right, is there anything further
2 we need to take up now before we adjourn for the day?

3 MARSHAL MANSFIELD: Yes, your Honor, I need some
4 more deputies sworn with the jury.

5 THE COURT: All right, have them brought into
6 the courtroom. Do you have a copy of the oath, Mr. Dale?

7 THE CLERK: Yes, sir.

8 (Thereupon, four United States Marshals were
9 brought into the courtroom.)

10 THE CLERK: Do each of you solemnly swear to keep
11 the jury together in this cause and not to permit any person
12 to speak to or communicate with them or allow them to com-
13 municate with any person or to communicate with them yourselves
14 about the trial of the case except as otherwise expressly
15 directed by the Court, so help you God?

16 THE COURT: Will each of you state your names
17 for the record?

18 MR. ZAKOVICH: Ray Zakovich, Pittsburgh.

19 THE COURT: And your station?

20 MR. ZAKOVICH: Pittsburgh, Pennsylvania.

21 MR. SCHMIDT: Robert Schmidt, Springfield,
22 Illinois.

23 MR. SMITH: Chester Smith, Chattanooga.

24 MR. GREGSON: Raymond Gregson, New Orleans,
25 Louisiana.

1 THE COURT: You gentlemen are selected as officers
2 of the court. In all of your dealings with the jury bear that
3 in mind and bear it in mind that you are not parties in any
4 way to this lawsuit. You are to be wholly impartial in all
5 of your dealings with the jury. You are not to in any way
6 discuss this lawsuit with the jury or in any way permit the
7 jury to discuss the lawsuit with you. You are for the purpose
8 of rendering whatever assistance and aid and comfort you can
9 to these jurors. At any time that it is necessary or appro-
10 priate that any juror should contact a member of his family
11 or some other such necessary contact, you should make certain
12 that that contact is carried out in the manner that would not
13 involve any discussion of this lawsuit or any matter pertaining
14 to this lawsuit. Are there any other instructions that would
15 be appropriate at this time to the officers?

16 MR. BERKE: We would just like for the record to
17 state if the marshal will, is this four in addition to the
18 sixteen that you had sworn in the other day that will now
19 be with the jury?

20 MARSHAL MANSFIELD: It is in addition.

21 MR. BERKE: So, that will be twenty.

22 THE COURT: All right.

23 MARSHAL MANSFIELD: Your Honor, sir, that is not
24 at one time. This is a matter of working various details. We
25 have twenty-two now. Some need to go home. So we don't have

1 that many with the jurors at one time.

2 THE COURT: All right. If there is nothing
3 further, let's adjourn court until nine o'clock tomorrow
4 morning.

5 (Thereupon, at 4:40 o'clock, p.m., court was
End TK 36A6 adjourned until 9:00 a.m., January 24, 1964.)

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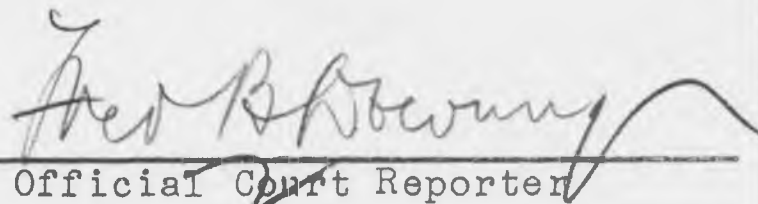
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REPORTER'S CERTIFICATE

I, Fred B. Downing, Official Court Reporter for the United States District Court, for the Eastern District of Tennessee, Southern Division, at Chattanooga, Tennessee hereby certify that Richard Smith and John E. Hamlin, court reporters, in accordance with stipulation of counsel for the parties filed in this case, recorded by machine shorthand the proceedings had in open court in the above styled case on January 23, 1964; and that said proceedings were reduced to typewriting under my supervision; and that the foregoing transcript is a true and correct transcript of the said proceedings to the best of my knowledge.

This the 23rd day of January, 1964.


Official Court Reporter

IN THE DISTRICT COURT OF THE UNITED STATES
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff.

vs.

NO. 11,898

JAMES R. HOFFA, ET AL,

Defendants.

Chattanooga, Tennessee

January 18, 1964

Before: Honorable Frank W. Wilson,
Judge

OFFICIAL TRANSCRIPT OF PROCEEDINGS
OF PRETRIAL CONFERENCE

IN THE DISTRICT COURT OF THE UNITED STATES
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff.

vs.

NO. 11,898

JAMES R. HOFFA, ET AL,

Defendants.

APPEARANCES:

FOR THE UNITED STATES OF AMERICA:

J. H. Reddy, Esq.
James F. Neal, Esq.
John J. Hooker, Sr., Esq.
B. B. Guthrie, Esq.

FOR THE DEFENDANT HOFFA:

James E. Haggerty, Esq.
Harry Berke, Esq.
Marvin Berke, Esq.

FOR THE DEFENDANT MEDLIN:

R. B. Parker, Jr., Esq.

FOR THE DEFENDANT CAMPBELL:

Cecil Branstetter, Esq.

FOR THE DEFENDANT PARKS:

Jacques M. Schiffer, Esq.

FOR THE DEFENDANT DORFMAN:

Harvey M. Silets, Esq.

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FOR THE DEFENDANT TWEEL:

Dave Alexander, Esq.
Henry Grady, Esq.

FOR THE DEFENDANT KING:

Harold E. Brown, Esq.

TK 1
EW 1

9:00 o'clock A.M.

January 18, 1964

BE IT REMEMBERED, the above-entitled cause came on for pretrial conference on this date before the Honorable Frank W. Wilson, Judge, when the following proceedings were had, to-wit:

THE COURT: Well, let's call the meeting to order. This, of course, is a conference that the Court had requested in the case of United States of America vs. James R. Hoffa, Lawrence W. Medlin, Larry Campbell, Thomas Ewing Parks, Allen Dorfman, Nicholas J. Tweel and Ewing King.

I think the first thing we should do is just have each person present, if he would, identify himself, state his representation for the purpose of the record. So suppose we start first with the government and then go through the respective defendants. All right.

MR. REDDY: J. H. Reddy, United States Attorney.

MR. HOOKER: John J. Hooker, appearing for the United States Government.

MR. NEAL: James F. Neal, appearing for the government.

MR. GUTHRIE: B. B. Guthrie, Assistant United States Attorney.

MR. GRADY: Henry Grady, Nicholas Tweel.

MR. ALEXANDER: Dave Alexander, Nicholas Tweel.

1 THE COURT: All right, Mr. Parker.

2 MR. PARKER: R. B. Parker, Lawrence W. Medlin.

3 MR. SCHIFFER: Jacques Schiffer for the Defendant
4 Parks, especially appearing this morning. I have an applica-
5 tion to make to your Honor.

6 MR. MARVIN BERKE: Mervin Berke for the Defendant
7 Hoffa.

8 MR. HAGGERTY: James E. Haggerty, Defendant Hoffa.

9 MR. HARRY BERKE: Harry Berke, Defendant Hoffa.

10 MR. SILETS: Harvey M. Silets on behalf of the
11 Defendant Allen Dorfman and if I may interject here, your
12 Honor, according to your order of January 4 convening this
13 meeting I wish to waive the presence of my client.

14 THE COURT: All right, we will take that up next.

15 MR. BRANSTETTER: Cecil Branstetter representing
16 Larry Campbell.

17 MR. BROWN: Harold Brown representing Ewing King.

18 THE COURT: All right. Now, on behalf of each
19 of the parties what is the position of the respective counsel
20 with regard to the presence of each of the defendants?
21 Suppose that we take them up in order. Mr. Hoffa's counsel,
22 what is the position of Mr. Hoffa?

23 MR. HAGGERTY: We waive the presence of Mr. Hoffa
24 may it please the Court.

25 THE COURT: All right, Mr. Medlin.

1 MR. PARKER: We waive the presence of Mr. Medlin
2 for this, your Honor.

3 THE COURT: Mr. Campbell.

4 MR. BRANSTETTER: His presence is also waived,
5 may it please the Court.

6 THE COURT: Mr. Parks.

7 MR. SCHIFFER: We waive the appearance of Mr.
8 Parks.

9 THE COURT: Mr. Dorfman.

10 MR. SILETS: We waive his appearance, your Honor.

11 THE COURT: Mr. Tweel.

12 MR. ALEXANDER: We waive the appearance.

13 THE COURT: And Mr. King.

14 MR. BROWN: Waive the appearance of Mr. King.

15 THE COURT: All right. I think perhaps the first
16 thing we should take up is the question as to whether any
17 party has any objection to the holding of this hearing and
18 any objection to the holding of it in chambers rather than
19 in open court. I will allow you to state those matters for
20 the record at this time.

21 First, let's take up for the government, is there
22 any objection?

23 MR. HOOKER: We have no objection.

24 THE COURT: All right. Let's take up each of the
25 defendants. For Mr. Hoffe?

1 MR. HAGGERTY: We have no objection.

2 THE COURT: All right, Mr. Medlin.

3 MR. PARKER: We have no objection, your Honor.

4 THE COURT: Mr. Campbell.

5 MR. BRANSTETTER: We have no objection for Larry
6 Campbell, may it please the Court, with the exception of the
7 matters that are of record already.

8 THE COURT: Oh, yes. Well, I am just asking now
9 whether you have any objection to having a conference this
10 morning in the first place and, the second place, having a
11 conference in chambers rather than having it in open court.
12 Do you have any objection?

13 MR. BRANSTETTER: I have no objection.

14 THE COURT: All right, Mr. Parks.

15 MR. SCHIFFER: We have, on behalf of Mr. Parks
16 we object to the conference at this time and the reasons I
17 will state for your Honor at the appropriate time during
18 this morning.

19 THE COURT: Well, let's see, if you don't mind,
20 go ahead and state your objections now, in other words, the
21 question of whether we should proceed here at all this morning.

22 MR. SCHIFFER: The reason for that I respectfully
23 suggest, your Honor, is that yesterday in the Court of Appeals
24 on an appeal application to the Court of Appeals for the
25 Sixth Circuit in the nature of a mandamus to continue this

1 case, the Court of Appeals, oh, about 5:30 or six o'clock
2 last evening, rejected the application of the Defendant Parks.

3 In view of the circumstances and the position,
4 we feel the law is in so far as Parks is concerned on that
5 application I should like sufficient time, at least two days,
6 Monday and Tuesday of next week, to apply to the Supreme
7 Court of the United States for a stay of this entire pro-
8 ceeding insofar as Mr. Parks is concerned or a severance,
9 if the government should so consent, and we believe his
10 substantial rights, being so seriously affected, that he
11 will, of necessity, have to appear in this court on Monday
12 without counsel.

13 I have represented Mr. Parks from the date, the
14 approximate date of the indictment. I am obligated in
15 Chicago to appear in a serious cause before a special master
16 appointed by the Court of Appeals for the District of Columbia.
17 That will terminate, we expect, on the 14th of February as
18 an outside date, it may very well terminate shortly before
19 that date.

20 For that reason, and my being committed to
21 appear in that case and the dates of the trial, that case
22 having been set on October 3rd last, I feel that I must
23 discharge my obligations to the Court of Appeals of the
24 District of Columbia and I might say that many lawyers, of
25 course, find themselves in the position, no doubt your Honor

1 has when you were practicing law, where you were in one case
2 and another case is forced to trial and I believe the state
3 of the law is such in view of the case, the Bye case, the
4 Glazers case and I'd say a lot of cases which maintain the
5 position that a criminal defendant, when his counsel is
6 actually engaged at a trial, that that defendant's must, of
7 necessity, not commence until the lawyer has discharged his
8 obligation and the court in which he is already engaged--

9 THE COURT: (Interposing) All right, Mr. Schiffer,
10 I want to give you an opportunity to argue your position and
11 argue it on its merits, however, I am not clear in my own
12 mind, however, that the argument you are making now would go
13 to the specific question that I have and that is whether or
14 not any objection is being raised to the holding of this
15 conference.

16 Is there any other objection that you have to
17 the holding of this conference other than the position that
18 you have involving that appeal?

19 MR. SCHIFFER: None other, your Honor. I just
20 wanted to save his right.

21 THE COURT: Yes. But other than that you have
22 no objection to the legality of the hearing here or the
23 manner in which we are holding it?

24 MR. SCHIFFER: None at all, aside from that one
25 objection, we certainly consent to a hearing, just to save

1 his rights on the record.

2 THE COURT: All right. We will take that up
3 then later on this morning and let you proceed with your
4 argument.

5 Mr. Dorfman?

6 MR. SILETS: No objection, your Honor.

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1 THE COURT: Mr. Tweel?

2 MR. ALEXANDER: No objection, Your Honor.

3 THE COURT: Mr. King?

4 MR. BROWN: No objection, Your Honor.

5 THE COURT: I thought that perhaps we would take
6 up the matters. We will take up first the matter of the
7 physical arrangement for holding the trial. I am thinking
8 about, for example, the courtroom arrangements. Perhaps we
9 might just step in the courtroom and look over the courtroom
10 and see what if any, suggestions, any of you may have. We do
11 have the problem in there of arranging adequate space for
12 all of the defendants and for all the defendants' counsel.
13 So, if, or perhaps we can leave that until last and do that
14 as we get ready to leave. Then in connection with the
15 physical arrangements I want to make available to the
16 defendants a courtroom that they might use on their floor, on
17 this floor, for the purpose of using it for a cloakroom.
18 Using it as a conference room, using it in any manner they
19 see fit and the only room that I have available for that
20 purpose is the clerk's office. That can be shut off from the
21 rest of the clerk's office. That is his private office. And
22 that can be shut off from the rest of the clerk's office and
23 that room made available, Mr. Berke, I'm sure and Mr. Brown
24 know where that room is and you can go around there and look
25 at that if you wish to before you leave this morning. As

1 I say, you can use that in any manner that you see fit. I
2 imagine the matter of keeping hats and coats is going to be
3 a problem. You might want to use it for that purpose. You
4 might want to use it for any conferences you want to hold.
5 If you want to use a telephone you might have to arrange for
6 putting a telephone in because we might have to take that
7 extension of the clerk's office out but you gentlemen confer
8 among yourselves and decide that.

9 Now, then, do any of you have any suggestions
10 at this time as to the order in which we take up any
11 particular matters?

12 MR. HOOKER: We have none, if Your Honor please.

13 THE COURT: All right. Suppose we take up first
14 then the matter of the jury lists. I have still pending before
15 me the motions made by respective defendants in regard to
16 the jury lists. Let me see if there is anything further that
17 any counsel wants to say other than as said in their brief in
18 that regard. Is there anything further that any counsel for
19 any defendant wishes to say in regard to that motion or those
20 motions? (Respite.) I take it by your silence there is not
21 anything. Is there anything the government wishes to say on
22 that motion?

23 MR. HOOKER: No, sir.

24 THE COURT: Well, then, I will have to proceed to
25 a prompt ruling on all aspects of that motion. In any event,

1 I might just say this, that the lists of jurors will be
2 available at the clerk's office, their names, their full names
3 and addresses will be available at the clerk's office to
4 anyone who requests a copy at eight o'clock on Monday morning.

5 Now, then, Mr. Brown, Mr. Binkley had called
6 yesterday about the possibility of your appearing in the
7 case and he is not appearing. I do think, however, that he
8 should be here Monday morning and that any motion in con-
9 nection, therefore, with change of counsel in behalf of Mr.
10 King, should be made in open court.

11 MR. BROWN: Yes, Your Honor. I understand that
12 there was a motion in the mail that was probably arrived this
13 morning?

14 THE COURT: Yes, sir, I received a motion this
15 morning from him, but I think that to be--, I want Mr. King
16 to be present, too.

17 MR. BROWN: I have already conferred with him
18 this morning and he is in agreement.

19 THE COURT: When that matter is taken up.

20 MR. BROWN: When we submit the motion and order
21 Monday morning, it will have his authority and Mr. Binkley
22 will be here, Your Honor.

23 THE COURT: If Mr. Binkley could just be here at
24 the beginning of that and let's be certain that no question
25 about the procedure comes up. What is the comments, if any,

1 that any counsel may have with regard to the jurors being
2 permitted to take notes in the case? Is there anything that
3 the Government cares to say about that?

4 MR. HOOKER: If Your Honor would indulge us just
5 a moment.

6 THE COURT: I realize that. I'm not asking you
7 to make any final decision on your position on this right
8 now, this morning, I just wanted to see if any of you have
9 any comments you want to make on it. (Respite.)

10 MR. ALEXANDER: Does Your Honor mean also whether
11 or not they be allowed to take these notes into the jury room
12 with them?

13 THE COURT: Yes. Yes.

14 MR. HOOKER: If Your Honor please, the government
15 has no suggestion to make. We just, whatever Your Honor tells
16 us, we had just as soon they did or did not take notes.

17 THE COURT: Well, as I say, I'm not asking you
18 to take any final position on it at this time and if you
19 wish to advise the Court of anything further at an appropriate
20 time in the proceedings when this issue might or might not
21 come up you will be permitted to do so, but I just wanted to
22 get any thoughts that you might have at this time.

23 MR. HOOKER: I notice jurors doing it frequently
24 and sometimes I have been pleased with it and sometimes I
25 haven't.

1 THE COURT: Mr. Alexander? Do you have anything
2 you want to say on that? At this time?

3 MR. ALEXANDER: I would just tentatively I would
4 be opposed to it, if Your Honor please. That would be my
5 position.

6 THE COURT: Mr. Parker, now, Mr. Parker, of course,
7 the Court of Appeals has decided you don't have any business
8 meddling in this lawsuit, but I will let you speak up.

9 MR. PARKER: Your Honor, I came here directly from
10 the Court of Appeals last evening. We only received the order
11 at five-thirty Cincinnati time and the clerk, Mr. Reuss asked
12 if I would bring a copy of the order which I have done. I
13 assume that Your Honor has perhaps received your copy?

14 THE COURT: No, no, the Clerk did call me and
15 advised me of it.

16 MR. PARKER: If I may then, Your Honor, I promised
17 Mr. Reuss I would do as in the case of the mails, I would like
18 to present to Your Honor a copy of the order.

19 THE COURT: All right. (Paper passed to the Court
20 by Mr. Parker.)

21 THE COURT: Well, we will just have to appoint you
22 to represent the press, I guess, this morning. Let you stay
23 in the meeting. Under those circumstances, I take it, this
24 wouldn't be, there wouldn't be any purpose in asking you to
25 comment on this, but I just wanted to give you the opportunity

1 to say if you did.

2 MR. PARKER: No, sir, all we want to say is that
3 we sincerely appreciate Your Honor for the consideration given
4 us previously. We want to go home and if and when the
5 government ever tries us we hope that they send you back to
6 try us.

7 THE COURT: Mr. Schiffer?

8 MR. SCHIFFER: We would object, Your Honor.

9 THE COURT: All right, Mr. Haggerty, or Mr. Berke?

10 MR. BERKE: If Your Honor please, we would object
11 and would cite Your Honor to case of Davis, which is a
12 Tennessee case in 103 Fed., where the practice of taking notes
13 has been condemned. While they didn't hold it to be reversible
14 error in that case, they pointed out the fact that jurors
15 that do take notes have the advantage over jurors who don't
16 take notes and they use the notes in a persuasive manner to
17 get them to agree with the recollections that they are able
18 to show to the jurors their own notes. See, look, I took this
19 note and you don't remember it. This case that was testified
20 to four days ago or three weeks ago. So, we think that the
21 jury should have equal recollection of it the best they can
22 and we think that the taking of notes would be prejudicial
23 since the Court is asking us how we feel about it, we think
24 that exhibits should be made available to them during the
25 process of the trial and in that way only but not to permit

1 them to take notes. That is just the way we feel about it.
2 So, we would object.

3 THE COURT: Is that 103 Fed. 2d?

4 MR. BERKE: No. No. Your Honor, it is 103 Fed.

5 THE COURT: That is what I said, 103 Fed. Not
6 Fed. 2d. It is 1900.

7 MR. BERKE: It is an old case.

8 MR. HOOKER: I have got another case I wanted to
9 use it in.

10 MR. BERKE: All right.

11 MR. BRANSTETTER: Send him a bill for services.

12 THE COURT: All right, Mr. Silets?

13 MR. SILETS: Your Honor, I would object on behalf
14 of the Defendant Dorfman. Of course, the learned persuasive-
15 ness of Mr. Berke in citing the Davis case our position is
16 also that. Our feeling is that it would place a premium on
17 basis of one man to take a note over another man who had no
18 such ability and it is normally a deterrent to a defendant in
19 a case when one has a better memory than another. But moreover,
20 the Defendant Dorfman would not only object to this procedure
21 but would request instructions to the jurors that they did not
22 do so.

End
Tk 2

Tk3
follows

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1 MR. BRANSTETTER: Larry Campbell would take the
2 same position that has been stated, in fact, your Honor,
3 requesting an instruction, both from the history and stand-
4 point of juries as such as they are developed under the law,
5 we would especially instruct that notes not be taken.

6 MR. BROWN: King opposes, if the Court please,
7 if your Honor please.

8 THE COURT: All right. Well, gentlemen, as I
9 say, I don't know whether this question will or will not
10 come up but I would want counsel to be prepared to state
11 their position and make any further argument that they desire
12 to make if it should come up at some appropriate stage at
13 the beginning of the hearing and in that regard you might
14 look at the following authority, if you wish to take this
15 down.

16 This is the case of United States vs. Davis in
17 103 Federal 457, the case that Mr. Berke referred to. That
18 was a case from this state back in 1900 and the best the
19 Court can find it was the last case that passed on it that
20 declared the taking of notes improper.

21 MR. ALEXANDER: What was the page of that
22 decision, your Honor?

23 THE COURT: 103 Federal 457. The Judicial Con-
24 ference of the United States has approved the practice. As
25 the Court understands, you might desire to look at the

1 report in 26 Federal Rules Decisions 409. The title of it
2 is "The Jury System In The Federal Courts." I might just
3 read a brief statement from that report, it is as follows:
4 "In September of 1960, the Judicial Conference of the United
5 States approved a report by the committee on the operation
6 of the jury system, which report contained the following
7 recommendation." This is it, "Trial jurors should, in the
8 discretion of the Trial Judge, be permitted to take notes
9 for use in their deliberations regarding the evidence pre-
10 sented to them and to take these notes with them when they
11 retire for their deliberation. When permitted to be taken
12 they should be treated as confidential between the juror
13 making them and his fellow jurors."

14 If it will assist you any in your research in
15 this problem you might care to look at 261 Federal 2d 792,
16 188 Federal 2d 621, certiorari denied in that in 342 U. S.
17 819. 184 Federal 2d 903, 84 Federal 2d 569, 138 Federal
18 Supplement 344, and 32 Federal Supplement 479.

19 All right. Let's take up next the matter of
20 pre-emptory challenges. We will take up the matter of the
21 number of pre-emptory challenges and the matter of the
22 division of pre-emptory challenges, if any.

23 Before taking up the number of challenges let
24 me ask this: Can the defendants agree among themselves upon
25 the use or any division of pre-emptory challenges in this

1 case? Would you need to get together and consult about that?

2 MR. BRANSTETTER: For Larry Campbell, may it
3 please the Court, it would depend on the number. If we were
4 given sufficient number I am sure we could agree on it.

5 THE COURT: The number may or may not depend upon
6 whether you can agree.

7 MR. HAGGERTY: I think that would have a lot to
8 do with it.

9 MR. BRANSTETTER: Have a tremendous lot to do
10 with it. If we were limited, for example, I don't want to
11 proceed out of order, but if we were limited to the specific
12 ten, for example, for all, then I would not agree for Larry
13 Campbell but if, as in one or two of the cases that I can
14 give to the Court, the number were, because of the notoriety
15 of the case or other things were rather extensive in number
16 I am sure we could agree, or at least I would be very certain
17 as a logical matter that we could agree without having to
18 discuss it.

19 THE COURT: Anything any other counsel for the
20 defendants may have to say? Would it serve any purpose for
21 you gentlemen to consult among yourselves on that at this
22 time?

23 MR. SILETS: On behalf of the Defendant Dorfman,
24 my initial position would be that under the cases and under
25 the posture of the public events surrounding this case that

1 we would ask the Court for unlimited pre-emptory challenges
2 and, of course, that would obviate the need for any decision
3 between the defendants.

4 THE COURT: Just a moment. Let me make some
5 notes, gentlemen. Anything further with regard to that?

6 MR. BRANSTETTER: Would it be inappropriate for
7 me if I were to suggest, since I have already started, if
8 the Court please, you asked for a citation, Schesffer, in
9 291 Federal 2d at 689, held that the defendants were entitled
10 to an unlimited number of challenges where there had been a
11 considerable amount of publicity over just a 2-day period
12 preceding the trial, I believe it was a 2-day period.

13 THE COURT: The decision, please?

14 MR. BRANSTETTER: That's 291 Federal 2d at 689.

15 MR. SILETS: That could be obviated by a separa-
16 tion, if the Court please. The government has chosen to
17 join all these parties and now for it to be heard to say that
18 the granting of unlimited challenges because of the prolixity
19 of the defendants is no answer to the problem.

20 MR. REDDY: Well, obviously they wouldn't be
21 entitled, for instance, to a thousand challenges. That is
22 an unlimited number, if you want to pick a number out of
23 thin air.

24 MR. SCHIFFER: We'll take it.

25 MR. REDDY: I assume you would. I can't see

1 that we can indulge in unlimited numbers.

2 MR. BERKE: We would also like to call the Court's
3 attention to a case with not near the amount of publicity
4 that has been given in this case in which the Trial Court
5 granted one isolated defendant, and this is only one charge,
6 as I read the case, he granted him in that case, because of
7 publicity, a small amount of publicity, an additional 32
8 challenges, giving him a total of 42 challenges in the case
9 of United States vs. Bonanno in 177 Federal Supplement 106,
10 and I could read the quote, it's very short from that opinion
11 it says this, let's see, "The Court further stated in this
12 case in addition at the time of selection of the jury the
13 Court will excuse any prospective jurors who gives evidence
14 of being unable to serve fairly and impartially in this case.

15 Now, some of this is my language, your Honor.
16 I prefer to be absolutely sure that you read this case, but
17 the Court did grant an additional 32 challenges, making a
18 total of 42 pre-emptory challenges, and that might be some
19 basis for preventing the unlimited number that the government
20 feels like they object to, but I think the Court should
21 recognize that the defense counsel will not, because given
22 an unlimited amount of challenges, take undue advantage of
23 it because it would then become obvious to the jury what the
24 defendants are doing and we certainly want to represent the
25 defendants and give them the best possible defense, so we

1 say, both on the Scheaffer case that Mr. Branstetter had
2 suggested, and also on this case, wherein the Court granted
3 32 additional challenges to one defendant, it would be some
4 basis for arranging about the number of challenges.

5 MR. NEAL: Your Honor, I think it ought to be
6 said that the government not only objects to an unlimited
7 number of challenges, they object to anything over 10 for
8 all defendants.

9 I don't think that the government intended their
10 position to be misunderstood and merely objecting to an
11 unlimited number.

12 MR. HOOKER: No.

13 THE COURT: Well, the Court will not allow an
14 unlimited number of challenges but I will be glad to hear
15 them at this time from any counsel for the defendants with
16 regard to any authority they may have on the matter of the
17 number of challenges or any request or comment that they
18 may wish to make in regard to the number of challenges to
19 be allowed.

20 Suppose that we start with the defendants and
21 then--

22 MR. HOOKER: (Interposing) May I ask a question?

23 THE COURT: Yes, sir.

24 MR. HOOKER: Would they be agreeable to us
25 having additional challenges if they were allowed additional

1 challenges?

2 MR. HAGGERTY: You can't.

3 MR. HOOKER: By agreement we can, Mr. Haggerty.

4 MR. HAGGERTY: No, you can't, the rule is that
5 you can't.

6 MR. NEAL: I can present cases that the govern-
7 ment can have additional challenges by agreement of the
8 parties.

9 MR. HAGGERTY: I don't think even if we stipu-
10 lated it would be legal.

11 MR. NEAL: There is authority to that effect,
12 your Honor, I would be happy to get the authority for the
13 Court.

14 THE COURT: Well, let's take it up in this order.
15 Let's take it up and let the defendants state their position
16 with regard to any additional challenges and then the govern-
17 ment can state their position in regard to the matter you
18 have just raised also.

19 First, on behalf of Mr. Hoffa, is there anything
20 further that you gentlemen care to say with regard to addi-
21 tional challenges or anything further you wish to cite the
22 Court in that regard?

23 MR. BERKE: We have stated our position.

24 THE COURT: All right. With regard to the
25 Defendant Mr. Campbell, I take it we can proceed in the

1 other proceedings this morning without reference to Mr.
2 Medlin, can we not? There is no question about that, is
3 there?

4 MR. HOOKER: Unfortunately that appears to be
5 the case.

6 THE COURT: All right. Any further statements
7 on behalf of Mr. Campbell or any further citations of
8 authority?

9 MR. BRANSTETTER: I think not, may it please the
10 Court. The two cases referred to, Scheaffer and Bonanno,
11 are, we think, definitive enough in their approach to give
12 the Court an attitude of what should be just and fair, and
13 that is what the Defendant Campbell wants.

14 THE COURT: All right. Anything further on
15 behalf of Mr. Parks?

16 MR. SCHIFFER: Insofar as Mr. Parks' position
17 is concerned, your Honor, we rely upon the cases already
18 submitted, the Scheaffer case and the Bonanno case, and we
19 ask your Honor to take particular note of the fact that in
20 this indictment we feel, and we have not given up our rights
21 under our motion for the severance, that the way this
22 indictment reads today is an improper joinder. On each of
23 the four counts, as a result, if I were defending Mr. Parks
24 alone in a single trial, by virtue of the publicity I would
25 certainly not ask for less than 32 additional challenges,

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1 as the Bonanno case provided, and since he is being tried
2 under this improper joinder I think that he should have a
3 minimum of 50 additional challenges to meet what the publicity
4 in the area by its permeation of the entire atmosphere con-
5 cerning co-defendants, who shouldn't be in the case at all,
6 but by reason that he is to suffer because of this publicity
7 we feel it would be improper to him, so I think at least 50
8 additional challenges should be provided for Mr. Parks.

End Tk 3
Tk 4 fls.

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1 THE COURT: All right, Mr. Dorfman?

2 MR. SILETS: Your Honor, on behalf of Mr. Dorfman,
3 and in response to your direct question as to the number, how
4 many, if any I could suggest to the Court, my answer is that
5 I could not suggest enough and I would have to stand on the
6 position that in order to fairly select a fair and impartial
7 jury under the theory that the publicity surrounding this
8 case would otherwise tend to prevent us from a fair and
9 impartial jury, and coupling that with Your Honor's ruling
10 which Your Honor suggested you are going to take up later on,
11 suppressing so to speak the names and addresses of the
12 prospective jurors, so that we have not had an opportunity on
13 behalf of Mr. Dorfman to ascertain their qualifications and
14 their impartiality, we would stand upon our request that an
15 unlimited number of challenges be granted.

16 THE COURT: All right, Mr. Tweel?

17 MR. ALEXANDER: We take the same position that
18 Mr. Hoffa's counsel took on it on the Shaffer case and the
19 Bonanno case.

20 THE COURT: All right. Mr. King?

21 MR. BROWN: We adopt the same position of Mr.
22 Branstetter, Mr. Campbell and Hoffa cases, Your Honor.

23 THE COURT: All right. Now, what does the
24 government have to say about this matter?

25 MR. REDDY: Your Honor, to start off with we don't

1 think that the defendants should have more than the allotted
2 ten challenges. They have mentioned the matter of publicity.
3 I would like to at this time to call the Court's attention to
4 an interview of one of the defendants last night on a local
5 TV station that touches directly on this matter of publicity.
6 Personally, I think that it was highly improper thing to do.
7 I think the defendant could have controlled it himself and in
8 that regard, I would like to suggest to the Court for the
9 Court's consideration that we obtain a copy of that tape of
10 that interview and let it become a part of the record in this
11 case. Since the matter of publicity has been raised before
12 Your Honor and is the basis, the main basis, for their request
13 for this so-called unlimited challenges. I think it is
14 highly pertinent to the problem right before the Court at this
15 time. I think the Court realizes that, and understands, that
16 the government cannot control that sort of publicity. That
17 that is within the control of the defendants.

18 MR. SILETS: If Your Honor please--

19 THE COURT: Just a minute. Let's proceed and let
20 the government have anything further that they may have to say
21 on this problem of jury challenges.

22 MR. REDDY: So, in connection with the matter of
23 challenges and the number of challenges, I say that there are
24 several things that you will have to look to in that matter,
25 on that matter. And I don't think that they should be

1 entitled to any more than set out in the rules. But if Your
2 Honor sees fit to extend them additional challenges, I think
3 a limited number should be granted.

4 THE COURT: All right, is there anything further?

5 MR. NEAL: I would ask Your Honor, though, in your
6 discretion to review that tape before he acts upon this case
7 of additional challenges. I think it would be highly revealing.

8 MR. ALEXANDER: If it please Your Honor anything
9 that is said on that tape I don't think should be charged to
10 the Defendant Tweel. I did not hear the tape. I don't know
11 what they are talking about. I take it it is Mr. Hoffa's
12 tape of last evening which I have not seen or heard. I don't
13 think that should be considered against the Defendant Tweel
14 in arriving at the number of challenges to which I am entitled
15 in this case.

16 THE COURT: Well, there is no tape before the
17 Court in this record.

18 MR. SILETS: If Your Honor please, may I be heard?

19 THE COURT: Yes.

20 MR. SILETS: Your Honor, I think this allegation
21 by the United States attorney goes only to prove and
22 substantiate the suggestion made by Mr. Schiffer on behalf of
23 the Defendant Parks that the government is attempting to
24 attribute the evil if there be such evil to one of the
25 defendant's actions to all the defendants and this points up

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1 again the improper joinder here. And I suggest to Your Honor,
2 that we on behalf of the Defendant Dorfman as on behalf of
3 the Defendant Tweel there has been entered an objection,
4 object to the Court even considering this as to the Defendant
5 Dorfman. I cannot speak for any other defendant naturally.
6 But I would suggest to Your Honor that this again points out
7 the reason why there should be a severance in this case.

8 THE COURT: All right.

9 MR. SCHIFFER: Your Honor, insofar as the Defendant
10 Parks is concerned, in the event the Court should in its
11 discretion decide to listen to the tape, I would then be
12 forced to revise my estimate of fifty extra challenges to
13 500 because there is no question in my mind, Your Honor,
14 anyone in the general public who may have been asked to appear
15 in this case as a prospective juror would have of necessity,
16 if they found anything in the tape which is prejudicial, would
17 of necessity have to in their thought processes conclusively,
18 consciously or subconsciously carry that prejudice over
19 against the Defendant Parks. And if that is the way in which
20 the government intends to proceed in and suggest to the Court
21 that we select a jury in this case, then I think that we
22 should have an unlimited number of challenges because that
23 means the entire community now is saturated. And we should
24 have a severance if what the government has intimated has
25 happened, if it has happened, then I think we are entitled to

1 a severance.

2 MR. BRANSTETTER: May it please the Court, I don't
3 think that in representing Larry Campbell, that the matter
4 of any tapes are before the Court in any form as suggested.
5 I would suggest this problem, hoping merely to point it up and
6 that is, counsel for the government insists that ten challenges
7 would be sufficient for the total defendants. I believe there
8 are now six defendants at least I have a hard time keeping up
9 here.

10 MR. SCHIFFER: That's correct.

11 MR. BRANSTETTER: How we could divide ten amongst
12 six defendants, I would have great difficulty in seeing that.
13 You see, to point it up, to specifically point it up, Campbell
14 is a Negro. Now, it may be and I say this according to what
15 I conceive due to process in a proper judicial procedure, one
16 of these defendants may want to challenge jurors for a matter
17 that is directly or indirectly related with race. How I can
18 agree on a limited number of challenges to jurors just is not
19 within the judicial process of the human mind. So, I think
20 that confining our discussion to the point of challenges,
21 basing the totality of our consideration on whether or not
22 these defendants can receive a fair and impartial trial by
23 a fair and impartial jury, then a very large number of
24 challenges are going to be necessary.

25 THE COURT: All right. Is there anything further

1 on that subject?

2 MR. NEAL: Your Honor, I would like to add two
3 points. Number one, I am sure, I assure Mr. Schiffer that
4 the only thing prejudicial in the tape I'm speaking of was
5 prejudicial to the government. Number two, the Court should
6 consider the obvious cooperation and community of interests
7 among defendants in this case and pretrial motions and the
8 adopting of pretrial motions and the filing of motions which
9 are identical merely reproductions of motions. Mr. Hoffa's
10 counsel would file a motion. Other defendants will file
11 one-page adoptions. Or they will do the same thing by having
12 the same motions reproduced with change of name. I think that
13 should be considered when the Court is deciding this question.

14 MR. BRANSTETTER: May I be heard?

15 MR. HAGGERTY: I heartily disagree with that, Your
16 Honor. Each defendant here has separate counsel and are
17 standing on their own feet. It is not community of interests.
18 It is not a conspiracy case. And I certainly think that that is
19 terrifically illogical on the part of Mr. Neal, as usual.

20 MR. BERKE: I might say, Your Honor, and I don't
21 want to do too much talking, but the Court's order directed
22 that the counsel get together and see if they can agree on
23 the spokesman for cross examination on many of the other items
24 in the order and I don't think that we should be charged as
25 Mr. Neal did that we are here working together and I'm not

1 working with any counsel. Some, I have just met this morning
2 for the first time. But we did make an effort to try to see
3 what the others thought about it. We tried to comply with
4 the Court's order to try to get the counsel to see if they
5 can agree on certain things and then to have Mr. Neal imply
6 some improper motive just because we did what the Court said
7 I think is unfair to all counsel and I certainly resent it.

8 MR. NEAL: Let me say that, Your Honor, I did not
9 imply any improper motive. However, I will give you an
10 example. When a motion was filed on behalf of Mr. Tweel, and
11 this appears in the Court's records because Judge Gray made
12 it a part of the records, it was a part of the Court's records,
13 it came signed by Mr. Osborn's secretary, a counsel for Mr.
14 Hoffa at that time, on the stationery of Mr. Osborn. And
15 Mr. Tweel did not appear in court on the day. Mr. Tweel's
16 counsel did not appear in court on the day the motion was to
17 be argued, Mr. Tweel's counsel did. Mr. Hoffa's counsel did.
18 I'm not implying any improper motive. I'm saying that they
19 did cooperate.

20 MR. BRANSTETTER: If the Court please, I have
21 some familiarity with what the government counsel has said.
22 It is not the total picture. I appeared with government
23 counsel with Judge Gray and with other judges, I believe,
24 or with Judge Gray and other counsel on a number of occasions
25 wherein we sought to simplify procedures. So, that adoptions

1 could be had of various motions if they partook of the same
2 nature.

3 THE COURT: Yes, sir. The Court is familiar with
4 what the record reflects in that line, along that line.

5 MR. BRANSTETTER: So, the motivating factor as far
6 as I know and I state representing this to the Court, represent-
7 ing Defendant Campbell, had never met anyone other than the
8 Defendant Hoffa prior to the arraignment in this case. These
9 are separate matters and his uncle, I believe. The two. He
10 certainly had not seen them in many years, or anybody else.
11 So, the community of interests that is spoken of here just
12 doesn't exist. There is a community of dis-interests really.

13 MR. SILETS: Your Honor, I just think this is a
14 tempest in a teapot. I think when the Department of Justice
15 acting on behalf of the United States Government, no one
16 suggests that they don't rely on the United States Attorney
17 for the local district, does not rely upon the research
18 facilities of the Department of Justice or does not go to
19 the Secret Service when they have to. The Treasury Department
20 or anybody else. Whether this be community of interests,
21 research or analysis of authorities it is because we are
22 joined together and the Court should not attribute an evil
23 motive or ultimately that the jury we should hope would not
24 attribute evil motive the fact that we are all seated in the
25 same courtroom and I hope the government would not seek to

1 introduce defendants because we are all joined together. I
2 just feel that we are overlooking the realities.

3 THE COURT: Is there anything further? (Respite.)
4 Gentlemen, we'll take this under advisement and consult further
5 Monday morning about it.

6 MR. REDDY: That is on the whole question of
7 challenges, Your Honor?

8 THE COURT: Yes. I believe that that would be
9 necessary in order that the Court study the cases unless you
10 gentlemen want to come back late this evening and go further
11 on this?

12 MR. HAGGERTY: Your Honor, there is one matter
13 that in a sense is extraneous to this hearing, but it refers
14 to certain records which Mr. Neal in a letter in what is the
15 date of it?

16 MR. SILETS: I have it before me, Your Honor. It
17 is dated August 19, 1963 and it is addressed to the Honorable
18 Frank Gray, Jr., with copies of the letter to all counsel of
19 record. In a sense, since Mr. Haggerty referred to it, I will
20 hand it to him.

21 MR. HAGGERTY: Well, it is my understanding, Your
22 Honor, that Mr. Silets contacted Mr. Neal and he referred him
23 to Mr. Durkin. Am I correct in that, Mr. Neal?

24 MR. NEAL: Yesterday I believe, contacted yester-
25 day morning, I believe. Or I beg your pardon, it was--, I was

1 in Cincinnati yesterday morning. It was Thursday morning, or
2 Thursday afternoon.

3 MR. HAGGERTY: Does the government confess error?

4 MR. NEAL: The government never confesses error.
5 Unless it is the Solicitor General.

6 MR. HAGGERTY: Now, going on further it was some
7 tentative agreement that at eleven o'clock this morning that
8 those records would be made available for the photostating.
9 We have three photostat machines here and their operators to
10 take the photostats of these records. I'm inquiring if Mr.
11 Marvin Berke may be excused to go out and supervise the taking
12 of those records? Is that satisfactory to you, Mr. Neal?

13 MR. NEAL: (Indication in the affirmative.)

14 THE COURT: I don't understand this matter? What
15 is the matter that is before the Court?

16 MR. HAGGERTY: Well, you go ahead.

17 MR. HOOKER: Well, we have no objection to Mr.
18 Berke.

19 MR. SILETS: Each of the defendants had filed
20 motions under Rules 16 and 17 for production of documents which
21 may be in the possession of the government. After argument
22 before Judge Gray the government in its judicial wisdom decided
23 to furnish to the defendants at one time all of the records
24 which they had in their possession pertaining to telephone
25 records, hotel accommodations, travel records, and I had

End Tk4

Tk 5
ollows

1 spoken to Mr. Neal who directed me to his assistant, Mr.
2 Durkin, and we have tentatively agreed that those would be
3 produced for inspection and copying this morning to all
4 defendants who so wished to have them.
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1 THE COURT: There is no objection?

2 MR. HOOKER: No objection.

3 THE COURT: Well, that matter, as I understand
4 then, can proceed without any action by the Court.

5 MR. SILETS: Yes, your Honor.

6 MR. HAGGERTY: That's right, your Honor, I just
7 wanted to bring it out.

8 THE COURT: Is there any reason why the Court
9 should not take under advisement this matter of the number
10 of peremptory challenges and resolve that matter before
11 beginning the examination of the jury upon Monday?

12 MR. HOOKER: We see no reason.

13 THE COURT: All right. Now, gentlemen, let's
14 discuss the procedural aspects of conducting the voir dire
15 examination. I will be happy to hear from any counsel as
16 to their suggestion or request in regard to the procedure
17 in which the voir dire is going to be conducted.

18 First, does the government have any recommenda-
19 tion in that regard?

20 MR. HOOKER: We think it has been suggested,
21 maybe it hasn't been suggested before, I don't recall, that
22 under the usual practice that the defendants should proceed
23 with the examination of witnesses and would offer their
24 proof in the order in which they are named in the indictment.

25 THE COURT: Yes. I am not thinking particularly

1 about the order in which they examine them. I am talking
2 about such matters as whether we should impanel 12 jurors
3 and conduct the voir dire of all 12 jurors simultaneously
4 or what other procedure.

5 MR. HOOKER: We think the jurors should be called
6 in separately and after a particular juror is either accepted
7 or rejected for that matter that such juror is accepted and
8 be sent to the jury room and not be present in court for the
9 voir dire examination of the remainder of the jurors and, of
10 course, the ones who were not accepted would be excused and
11 that no prospective venire man be admitted into the court-
12 room during the examination of any particular venire man.

13 In other words, that all prospective jurors be
14 kept out of the courtroom until their names are called and
15 then if accepted that they be sent to the jury room and with-
16 drawn from the place where the voir dire examination will
17 continue.

18 Does that respond to your Honor's question?

19 THE COURT: Yes. All right. Let's see what the
20 defendants say. Start with Mr. Hoffa's counsel.

21 MR. BERKE: If your Honor please, it's refreshing
22 to see that we are in agreement on something and I heartedly
23 agree with Mr. Hooker on that. I think that is a splendid
24 suggestion and that way there is no bad inference to other
25 prospective jurors, they don't hear any of the banter between

1 the other jurors and we are willing to have that.

2 MR. BRANSTETTER: Defendant Campbell agrees with
3 that procedure.

4 MR. BROWN: Defendant King agrees with this
5 procedure.

6 THE COURT: All right.

7 MR. ALEXANDER: And I must be wrong but I agree
8 with Mr. Hooker.

9 MR. SILETS: Your Honor, on behalf of the
10 Defendant Dorfman I accept that suggestion and if the Court
11 so desires I cite as authority for this procedure United
12 States vs. Anthony Acardo, 289 Fed. 2d 133, it happens to
13 be a Seventh Circuit case.

14 THE COURT: 298 Federal 2d?

15 MR. SILETS: 133.

16 THE COURT: Well, apparently we all agree then
17 that all counsel agree that jurors shouldn't suffer from an
18 overexposure of voir dire.

19 Well, that being the case and counsel being in
20 agreement on that the Court would approve that method of
21 conducting the voir dire, subject to a study of any authority
22 that might indicate that the Court was incorrect in doing
23 that.

24 Now, then suppose that we take up the order on
25 procedure that was put down in the case and the objections

1 that have been made to that order by various defendants.

2 MR. HOOKER: May I ask one more question about
3 the jury?

4 THE COURT: All right.

5 MR. HOOKER: After the 12 have been selected,
6 that is, 12 jurors have been accepted both by the government
7 and the defendants but not sworn, would your Honor then fill
8 the box with those 12 and permit either the defendants or
9 the government, if they so desired at that time, to exercise
10 the remainder of their peremptory challenges or such portion
11 of them as they care to exercise, or will your Honor regard
12 the acceptance of the juror in the first instance before the
13 12 are completed as being binding on the government and the
14 defendants regardless of whether they have peremptory
15 challenges remaining unused or not?

16 MR. REDDY: That method is provided for or at
17 least approved in that Davis case that was cited a little
18 while ago, that West Tennessee case, United States vs. Davis
19 back in 103 Fed.

20 THE COURT: Well, are you just asking for
21 information or are you recommending that the Court follow
22 that?

23 MR. HOOKER: I am recommending. I think that is
24 a fair way to do it but we are not particularly urging it.
25 We are anxious to have the question settled certainly by the

1 time we start the selection of the jury because it is very
2 important.

3 THE COURT: In other words, you are suggesting
4 that we examine each juror individually and then as they are
5 accepted, when 12 have been accepted that all 12 be put into
6 the jury box and then that either party be allowed to use
7 any remaining peremptory challenges that they may have.

8 MR. HOOKER: Not to re-examine but simply to
9 strike if you have peremptory challenges remaining. I
10 personally think that is conducive to getting a fair jury
11 to everybody concerned, but we are not urging that, we want
12 to know what your Honor's position about it is going to be
13 before we start.

14 MR. ALEXANDER: On behalf of the Defendant Tweel,
15 we will agree to that. I understood that was the law anyway
16 that you could strike them until the jury is finally sworn.

17 MR. REDDY: That is my understanding of it.

18 MR. BROWN: I understand the procedure, if I may,
19 your Honor, Mr. Hooker suggested they be put in the box,
20 strike one or two. Then what happens to the other 10 or 11,
21 are they to sit in the courtroom?

22 MR. BERKE: They go back.

23 MR. BROWN: While the remaining venire men are
24 examined?

25 MR. HOOKER: They go back.

1 MR. BROWN: That would defeat the purpose.

2 THE COURT: All voir dire would be conducted
3 individually.

4 MR. BROWN: We have no objection to that.

5 THE COURT: All right, let's see, does each
6 counsel for the defendant agree to that suggestion? Is
7 there any objection by Defendant Hoffa?

8 MR. BERKE: We have no objection. That occurred
9 in a civil matter that I had before your Honor where your
10 Honor at one time--

11 THE COURT: (Interposing) Yes, in the civil
12 cases I follow the practice of once you have passed on a
13 jury you cannot go back, or any juror, you cannot go back
14 and exercise a peremptory challenge unless you can persuade
15 the Court that you have obtained information since having
16 passed on him that--

17 MR. BERKE: (Interposing) Well, it's not a
18 federal case and in the selection of juries I understand
19 we go a great deal by the local practice of the State Courts.
20 We think that the Supreme Court not too long ago in the case
21 of State vs. Setep has definitely approved that practice
22 suggested by Mr. Hooker and we think that that is a proper
23 way to do it provided now that when the government strikes
24 one of the jurors that the defendants, all of them, have at
25 least one challenge left.

1 Now, the practice is and the rule stated by the
2 Supreme Court is as long as the defendants have not exhausted
3 their challenges the government can strike and it works both
4 ways.

5 Now, if the government has already exhausted
6 their challenges then prior to the time the government
7 exhaust their challenges we should then, even before the 12
8 are selected, suggest to the Court that we desire to strike
9 one of the jurors already accepted.

10 Now, if the Court is going to follow the practice
11 of shutting the bars down, as the Supreme Court of Tennessee
12 did, whenever the challenges of one side or the other have
13 been exhausted, why, then we would like to know now what
14 the procedure will be.

15 I have no insistence that it should be done at
16 that time, but I do want to call the Court's attention that
17 the Supreme Court of Tennessee did state that it's too late
18 to challenge one you have accepted if the other side has
19 already exhausted their challenges.

20 Now, we are willing to modify that rule but we
21 might discuss that.

22 MR. HOOKER: That will be acceptable to us and
23 I think that is a fair way to do it. We would be agreeable
24 to it.

25 MR. SILETS: Your Honor, I think here is the

1 situation where obvious disagreement is between the defendants.
2 I would agree to the procedure on behalf of Mr. Dorfman
3 originally outlined by Mr. Hooker without regards to who,
4 whether the government has any remaining challenges, of
5 course, if the defense has no remaining challenges there is
6 no such problem, we just could not make any more challenges,
7 but if the government has exhausted its challenges and we
8 have 12 men, good men and true in the box, and I have on
9 behalf of Mr. Dorfman three more challenges, I would like
10 to proceed under the originally outlined procedure and exer-
11 cise, if I saw fit at that moment, any one of those three
12 or all.

13 MR. BROWN: That would be the position of the
14 Defendant King, if the Court please.

15 THE COURT: Well, in view of the fact that there
16 is some disagreement over the procedure suggested by Mr.
17 Berke, let's go back to the original suggestion of Mr.
18 Hooker, namely that if either side has any peremptory
19 challenges left after 12 jurors have originally been accepted
20 that either side be permitted then to exercise any remaining
21 peremptory challenges without conducting, however, any
22 further voir dire examination. . . .

23 MR. BRANSTETTER: Defendant Campbell--

24 THE COURT: (Interposing) Of that panel?

25 MR. SILETS: Defendant Dorfman will agree to that.

1 MR. ALEXANDER: Defendant Tweel will agree with
2 that.

3 MR. BROWN: Defendant King will agree with that.

4 THE COURT: How about Mr. Hoffa?

5 MR. BERKE: I don't follow the Court. Is the
6 Court saying that we can challenge as long as the defendants
7 have challenges or as long as the government has challenges?

8 THE COURT: If either side has any peremptory
9 challenges remaining after 12 jurors have been passed and
10 accepted then that side will be permitted to exercise any
11 remaining challenges they may desire to exercise, irrespec-
12 tive of whether the other side has any challenges remaining.

13 MR. BERKE: We agree to that. That was Mr.
14 Hooker's suggestion, we agree to that.

15 THE COURT: Is that agreeable with the government?

16 MR. HOOKER: That is agreeable with the govern-
17 ment.

18 THE COURT: Very well then, we will proceed in
19 that manner.

20 MR. SILETS: Your Honor, may I inquire then in
21 terms of practical procedure and at that precise moment will
22 the 12 be called in and then the government has a challenge
23 and they so desire to exercise it, would it be made in the
24 presence of the other 11 or would the 12 be called in and
25 retired? We have apparently all agreed that there should be

1 some effort to keep co-jurors from being influenced by
2 questions as to any other jurors or any challenge to a
3 particular juror and it seems to me all that caution would
4 be obviated if we brought all the 12 in and said, "Well, we
5 don't want X," or "The defense will excuse Mr. X, Y and Z,"
6 and the remaining nine members observe this. Just as a
7 practical suggestion--

8 MR. HOOKER: (Interposing) We agree, we think
9 that is right, that is the way it ought to be done is after
10 the 12 are selected, before they are even called back into
11 the courtroom and in their absence that if either side has
12 the name on that list of 12 that he wants to be struck that
13 that be done in the presence of the Court but in the absence
14 of the jury and the jurors simply be advised in some appro-
15 priate manner not to return to the jury room until the box
16 is filled up. We are in accord with that. I think that is
17 fair.

End Tk 5
Tk 6 fls.

1 THE COURT: Well, before attempting to summarize
2 this voirdire procedure, let's take up the matter of alternate
3 jurors. The Court has in mind allowing four alternate jurors
4 in this case and each side will be allowed two peremptory
5 challenges under the rule as the Court understands it to the
6 alternate jurors. The selection of the panel of twelve jurors
7 would proceed to a completion and after a completion of that
8 panel, then we will proceed to the selection of alternate
9 jurors and as the Court would conceive that voirdire would be
10 conducted in exactly the same manner, that is, individually,
11 until the four alternate jurors had been selected. Is there
12 any reason why we should not proceed in that manner?

13 MR. HOOKER: Individually and in the absence of
14 the other twelve and in the absence of each other?

15 THE COURT: Yes.

16 MR. HOOKER: That is satisfactory to the government.

17 MR. BERKE: Yes, sir.

18 THE COURT: Now, one further thing in that con-
19 nection, the Court had considered doing this, namely, calling
20 twelve jurors. Placing twelve jurors in the box and the
21 Court conducting a general voirdire with regard to their
22 qualifications to serve. That thereupon, they would then be
23 excused from the courtroom as would all of the jurors and we
24 would proceed to examine each of those twelve individually
25 in accordance with the procedure that has just been outlined

1 here. Is there any reason why that should not be considered?

2 MR. SILETS: Could I back up just one step, Your
3 Honor? I don't want to interrupt while the Court is making
4 notes on these alternate jurors, is it the Court's decision
5 to grant only two peremptory challenges? Might I suggest an
6 alternative to that, that no less than two be granted, but if
7 there are any unused peremptory challenges by the defense or
8 the government, for the twelve jurors, that they also be made
9 available for use on the peremptory challenges?

10 THE COURT: Do not the rules specifically cover
11 that, Mr. Silets?

12 MR. SILETS: I think the rule does set forth the
13 fact that two peremptory challenges are allowed. I don't
14 recall it being as conclusive.

15 MR. REDDY: Two out of four.

16 THE COURT: It is under Rule 24, 24 (c). The
17 Court may direct that not more than four jurors in addition
18 to the regular jury be called and impaneled to sit as alternate
19 jurors. Alternate jurors in the order in which they are
20 called shall replace jurors who prior to the time the jury
21 retires to consider its verdict become unable or disqualified
22 to perform their duties. Alternate jurors shall be drawn in
23 the same manner, shall have the same qualifications, shall be
24 subject to the same examination and challenges, shall take
25 the same oath and shall have the same qualifications and

1 and facilities and privileges as the regular jurors. An
2 alternate juror who does not replace a regular juror shall
3 be discharged after the jury retires to consider of its
4 verdict. Each side is entitled to one peremptory challenge
5 in addition to the otherwise allowed but if where two are
6 to be impaneled. Two peremptory challenges if three or four
7 alternate jurors are to be impaneled. The additional
8 peremptory challenges may be used against an alternate juror
9 only and the other peremptory challenges allowed by these
10 rules may not be used against an alternate juror.

11 MR. SILETS: Thank you, Your Honor.

12 MR. HOOKER: If Your Honor please, in responding
13 to Your Honor's question, my understanding would be that Your
14 Honor was suggesting there that the box be filled with twelve
15 prospective jurors. That Your Honor would then ask them such
16 questions as--, by the way, we have submitted some proposed
17 subjects of inquiry and I take it the defendants will, we
18 understood that was in compliance with Your Honor's order, --
19 that you will ask such questions as you think proper to
20 determine at least generally the general qualifications of
21 those twelve men. Then those twelve persons would all be
22 sent then out of the courtroom and into the jury room. And
23 called back into the courtroom one at a time for voir dire
24 examination by the government and the defendants. And if
25 accepted would be sent to some other room apart from the

1 other eleven that were waiting, say, at the beginning. And so
2 on through.

3 THE COURT: When those twelve are then exhausted
4 either by being excused or accepted, we will put twelve more
5 in the box.

6 MR. HOOKER: Or put some number more in the box
7 to make up the twelve. I take it if you had gotten six out
8 of those twelve then the next time you called a group to fill
9 the box you would only call six. Or call twelve. Twelve is
10 left fill the box again, fill the box again. So that in effect
11 gives everybody, to use the slang expression, two looks at
12 them, and gives us the right to examine individually and the
13 defendants after Your Honor has qualified them generally on
14 such subjects as you think are proper subjects of inquiry.
15 That procedure would be satisfactory to the government. We
16 think it is a fair way to proceed.

17 THE COURT: All right. Any objection to that by
18 any defendant? If not, the Court will attempt to summarize
19 the procedure of conducting the voir dire.

20 MR. BRANSTETTER: Could I raise one question on
21 the alternate jurors? As I understood the rule, it provides
22 for two to each side challenges when you go to the alternate
23 jurors. I don't know how, for example, if we proceed according
24 to the listing on the indictment, if Mr. Hoffa challenges
25 the first juror, and if Mr. Medlin were still in the case and

1 challenged the second one and I was the third one, I would be
2 deprived of any challenge on the alternate jurors. I rather
3 doubt if this is proper. I would think that this could not be
4 done. That I would thus in this manner by the method of the
5 formulation or the reading of the indictment, be deprived of
6 any right to challenge peremptorily any alternate juror. I
7 just raise that question.

8 MR. SILETS: Your Honor, as to the Court's re-
9 flections considered by the government placing the twelve in
10 the box and the Court asking its general questions, on behalf
11 of the Defendant Dorfman I think that I would object to that
12 procedure for this reason. Assuming the Court felt in the
13 Court's discretion that one of those general questions
14 pertained to what knowledge the juror, if any, may have had
15 with this case, if such a juror would blurt out a prejudice
16 or indicate some feeling concerning the case in the presence
17 of the other twelve, all the caution and the attorneys have
18 considered as taking, would be gone. And it would restrict
19 the Court to almost meaningless questions. So, to avoid that,
20 would accomplish nothing. So, if we were to be cautious and
21 as the Court is desirous and as the government appears
22 desirous to be we are not trying to influence any co-juror
23 by the answers of the person being inquired of, and I would
24 object because I don't think that we would be accomplishing
25 that purpose. And I would request that we proceed as outlined

1 previously, each juror be questioned individually.

2 MR. NEAL: Your Honor only intended to ask the
3 statutory questions to determine the statutory qualifications?

4 THE COURT: The Court intends to leave the voir dire
5 to counsel very largely, subject to our further discussion
6 here this morning.

7 MR. HOOKER: That was my feeling when I made the
8 suggestion that in the Court's discretion the questions that
9 would be asked that original twelve wouldn't make any
10 difference as to whether the others heard them or not. The
11 Court, of course, more or less it would be of informal
12 nature.

13 THE COURT: All right, is there anything further?
14 I believe ~~that~~ the Court's voir dire of twelve jurors at the
15 initial impaneling would not in any way be prejudicial to
16 any defendant. I believe we have the procedure in that manner.
17 The Court will conduct general voir dire of twelve jurors and
18 then those twelve jurors and all of the jurors will be sent
19 out of the courtroom and the twelve will then be examined one
20 juror at a time in the absence of all other jurors. As each
21 juror is either accepted or excused, he will be sent from
22 the courtroom and if he is accepted he will be retained apart
23 from the other jurors. Then after twelve jurors have been
24 accepted, either side will be permitted to exercise any
25 peremptory challenges that they may have remaining. Such

1 peremptory challenges to be exercised, however, without
2 further voir dire examination. And all challenges will be
3 exercised in the absence of the panel. Four alternate jurors
4 will be selected and their method of selection will be the
5 same as outlined in the selection of the panel of twelve,
6 except that each side will be allowed two peremptory challenges
7 in accordance with the rule.

End
Pk 6

Pk 7
follows

1 Now, then may we take up the matters set forth
2 in the order of procedure, to which order objections have
3 been filed by one or more of the defendants? My purpose of
4 bringing this up now is to determine, first, whether any
5 party desires to make any further argument at this time on
6 that order or whether you wish to submit it on the briefs.

7 The first objection raised in any brief is an
8 objection to Paragraph No. 2 of that order suggesting that
9 counsel among the defendants consult to see if they might
10 agree. As indicated by the briefs that have been filed
11 counsel for the defendants cannot agree in that respect and
12 so, as the Court would understand it, that provision of the
13 order has been accomplished and you have advised the Court
14 that you cannot agree and we will proceed accordingly.

15 MR. HAGGERTY: If your Honor please, further
16 in Glazer vs. the United States, 315 U. S., Page 60--

17 THE COURT: (Interposing) Well, as I understand
18 it, this isn't a matter that the Court was ordering to be
19 done, this was just a matter that the Court was asking if
20 it could be done and it could only be done by stipulation of
21 counsel for the defendants.

22 MR. HAGGERTY: That's right, because it has been
23 held to be reversible error.

24 THE COURT: Yes. Now, that portion of that
25 paragraph that provides that all objections and exceptions

1 taken upon behalf of one defendant will inure to the benefit
2 of all defendants unless otherwise specifically ordered, is
3 that objectionable to any party?

4 MR. BERKE: That's all right, that is satisfactory.

5 MR. BRANSTETTER: Time saver.

6 THE COURT: The next matter objected to by any
7 brief was the third paragraph, providing the order of exami-
8 nation and cross examination of witnesses and the order
9 proceeding upon all arguments. Is there anything further
10 that any counsel wishes to say in addition to or to supple-
11 ment anything that has been said in the brief?

12 MR. NEAL: The government hasn't filed anything
13 on that but we think the Court has the power to do this and
14 the Court should follow the rules laid down and we respect-
15 fully request that it be done that way.

16 MR. BRANSTETTER: Could I raise a point that is
17 somewhat related to this particular aspect of the order, and
18 if the Court does not want to consider it now, of course,
19 your Honor can say so?

20 Would it not be appropriate under Item 3, Page
21 2 of the order, designating the method of procedure that
22 the government also agree to proceed on each count of the
23 indictment, which would be now three, I believe, and com-
24 plete its proof on that and then go to the next count and
25 complete its proof on that. Each counsel would know where

1 he stood and what position he was taking.

2 MR. NEAL: Count 2 is still in the indictment.
3 We are going to proceed the same way, of course. Count 2 is
4 still in the indictment, there is still a defendant in Count
5 2.

6 MR. BRANSTETTER: Well, it might be that this
7 is not the appropriate time to raise this, but I think it
8 would help certainly if that particular point were determined.

9 THE COURT: Well, let's raise that later. I will
10 give you an opportunity to raise any new matters but let's
11 stay to the question of the order of arguments and whether
12 anybody desires to be heard any further. The Court has that
13 under advisement and has the briefs submitted.

14 MR. HAGGERTY: We have covered it by our excep-
15 tions but it is not a logical course of procedure because
16 Hoffa is charged with aiding and abetting. We think and we
17 firmly believe that the attorney representing the defendant
18 charged in the count is the one that should cross-examine
19 first. There may be no necessity for our cross-examination,
20 however if there is we think that we should in every in-
21 stance in every count be permitted to cross-examine last.

22 THE COURT: All right. Anything further?

23 MR. SILETS: Your Honor, on behalf of the
24 Defendant Dorfman I adopted the exceptions taken by the
25 Defendant Campbell and I don't believe there was any

1 reference in those exceptions to Point 3. I would like to
2 state for the record that I do except to Point 3 and in
3 essence my exception takes the form of the criticism raised
4 by Mr. Haggerty. If there is direct evidence against a
5 principal and namely in my situation that would be Count 4,
6 and the direct evidence would be against the principal, Mr.
7 Tweel, I think it would be to the detriment of not only Mr.
8 Tweel but Mr. Dorfman, who is named as an aider in that
9 count, for Mr. Campbell, his counsel, who is not even named
10 in the count, but because he appears first in the list of
11 defendants, to cross-examine that particular witness. He
12 may, by the questions which he asks, which may be in effect
13 inimical to my defendant ruin the logical and desirous cross-
14 examination that Mr. Tweel's counsel or I may want to make
15 of that witness. His interests may not be the same as ours
16 with respect to that witness and so I would suggest this as
17 a logical procedure or as an alternate that if a witness be
18 offered by the government that the government indicate which
19 count it is being offered on and then the principal in that
20 count be first given the right to cross-examine and then the
21 aiders, if there are such in that count, be given the right
22 to cross-examine and the remaining defendants in the order
23 as they appear in the indictment.

24 MR. BRANSTETTER: This is the position of Larry
25 Campbell also, may it please the Court. This was the point

1 I sought to raise a little earlier in an indirect manner.
2 Campbell in Count 3 is charged with aiding and abetting.
3 Thomas Ewing Parks is charged in effect being the principal
4 that he aided and abetted. There can be no aider or abettor,
5 and we can submit to the Court cases on this, unless there
6 is a principal to aid and abet.

7 The government should be required to proceed
8 and designate its method or the witness that is being offered
9 to proof as to the principal first as stated, then that
10 person who is charged as a principal should first have the
11 opportunity to cross-examine because in the absence of a
12 principal there can be no aider or abettor.

13 We think this is fundamental, both procedurally
14 and from the standpoint of law. We should not be placed,
15 for example, if Larry Campbell cross-examines a witness when,
16 in fact, there has been and may not be established that
17 there is a principal at all, the government should be
18 required to elect and show which count the witness is being
19 offered for and to establish whether or not there is a
20 principal first.

21 MR. ALEXANDER: If the Court please, on behalf
22 of the Defendant Tweel, we agree with what Mr. Silets said
23 on that proposition. We are in Count 4 on the indictment.
24 Certainly on cross-examination of any witness pertaining to
25 Mr. Tweel, who is the principal in Count 4, it seems that

1 Tweel's attorney should have the right to cross-examine first
2 rather than go by the order in the indictment because the
3 other counts of the indictment would have no connection what-
4 soever with Tweel or with Dorfman and I don't think the
5 government could object to that.

6 MR. BRANSTETTER: Could I cite to the Court a
7 case that I have in mind?

8 THE COURT: All right.

9 MR. BRANSTETTER: Not squarely on the point but
10 very closely to this issue. It is Morei (spelling) M-o-r-e-i
11 vs. United States, 127 Federal 2d 827, that is a Sixth
12 Circuit case decided May the 14th, 1942, and it has been
13 cited with approval by the Seventh Circuit, the Second
14 Circuit, and at least two others as constituting the law.

15 MR. REDDY: What was that citation again?

16 MR. BRANSTETTER: It's 17 Federal 2d, Page 827.

17 MR. REDDY: (Spelling) M-o-r-i-e?

18 MR. BRANSTETTER: (Spelling) M-o-r-e-i.

19 MR. REDDY: 1942?

20 THE COURT: What do you say that case is authority
21 for?

22 MR. BRANSTETTER: That case is authority for the
23 position that there can be no aider or abettors in the
24 absence of a principal and, in effect, states the federal
25 rule to be or to comport to the common-law rule dealing with

1 aiders and abettors, even though the distinction as such
2 has been abolished by statute.

3 THE COURT: All right. This has a very direct
4 relationship to the order of proof, the matter we are now
5 talking about.

6 MR. BERKE: May I make a suggestion on something,
7 I believe it would be a simple way to solve this problem?
8 Why can't the Court just allow the defendants to agree among
9 themselves the order of cross-examination because the parties
10 know against whom the evidence is given and we think that
11 the attorneys on this item can agree among themselves and
12 I think that would be the solution, that is, as to each
13 witness.

14 MR. HOOKER: If your Honor please, may I make
15 this observation? That would not be objectionable to us.
16 We will let them agree among themselves how they cross-
17 examine provided, however, that we do want to insist that
18 when the time comes to offer the defendants proof that the
19 defendants testify in the order in which they are named in
20 the indictment.

21 THE COURT: We are talking here primarily about
22 the matter of cross-examination is all.

23 MR. HOOKER: It would be all right with us.

24 MR. BERKE: Well, if that is agreeable I believe
25 that will solve it. The defendants can agree among themselves

1 as to who would cross-examine first and so forth. That seems
2 to be agreeable with the government.

3 MR. HOOKER: The government has no objection to
4 that.

5 THE COURT: Very well. Then, as the Court under-
6 stands the position of the parties, the order of procedure
7 as set forth in Paragraph 3 will be retained exactly as there
8 stated except that with regard to the cross-examination of
9 witnesses that counsel for the defendants will be permitted
10 to agree among themselves upon any change in the order of
11 cross-examination.

12 MR. HAGGERTY: I think as far as the defense
13 goes my Brother Hooker is entirely neglecting the fact that
14 there is such a thing as the judgment of acquittal. I don't
15 think in a pre-trial criminal conference we have any right
16 to go beyond the government's case.

17 MR. HOOKER: I knew you wasn't waiving that, Mr.
18 Haggerty. I didn't mean to put it in that light, but if
19 the defendants do testify we think the proper order for them
20 to testify is as they are named.

21 MR. HAGGERTY: I think the determination should
22 be made after the judgments of acquittal and then and only
23 then are denied or overruled.

24 MR. BRANSTETTER: May it please the Court, I
25 didn't understand that you were discussing at this point

1 anything dealing with the defense.

2 If I did I would have objected to it.

3 MR. NEAL: Paragraph 3 says "Examination and
4 cross-examination." I would assume that the examinations
5 of witnesses by the defendants could only be their own
6 witnesses.

7 MR. BRANSTETTER: Then, of course, for the
8 Defendant Campbell I would object to any discussion of the
9 defense at this point and object to anything in the order
10 dealing with the method of procedure of the defense because
11 I certainly don't expect my case to go to the jury, for
12 example.

13 THE COURT: Well, all right.

14 MR. BRANSTETTER: Seriously.

15 MR. BERKE: Why can't we take up the other
16 matter after the motions for acquittal have been acted upon?

17 THE COURT: Of course, you can take up any
18 matter at any time.

19 MR. NEAL: Your Honor, we think it should be
20 decided.

21 MR. BERKE: I am sorry, go ahead.

22 MR. NEAL: Your Honor, we think, the government
23 thinks it should be decided now.

24 THE COURT: Well, I contemplate now that Para-
25 graph 3 of the order will stand as it is written except that

1 it will provide for in the cross-examination of any witness
2 the defendants may agree among themselves to vary the order
3 of cross-examination.

4 MR. HAGGERTY: There is just this about it, your
5 Honor, the defendants are entitled to put in their most
6 effective defense. Now, I, representing Mr. Hoffa, he is an
7 aider and abettor, it doesn't follow logic or sequence that
8 he should be compelled to go on first on the defense.

9 THE COURT: Well, I think we can postpone that
10 until we get to the point of presenting a defense and it's
11 not intended in this order to preclude your discussing that
12 if you desire to do so at the point where it becomes appro-
13 priate to present a defense in the case.

14 MR. BERKE: Except that Paragraph 3 also mentions
15 argument that might likewise have to be modified or adjusted
16 to a more logical sequence.

17 THE COURT: Well, I think you are entitled to
18 know the ground rules of the game as best we can define them
19 at this point that might be necessary to change the ground
20 rules from time to time.

21 All right. I notice that there has been some
22 objection made to the provision as stated in the order about
23 the Jenks Act documents. Does anyone desire to be heard
24 any further on the suggestion made by the Court in the order,
25 in addition to what has been said in the briefs?

1 MR. SILETS: Your Honor, on behalf of the
2 Defendant Dorfman, I would suggest in the Court's considera-
3 tion of those matters pertaining to 18 U. S. C. 3500 that
4 the government present to the Court, on whatever basis the
5 Court finally concludes after this discussion, not only
6 typewritten memoranda of substantially verbatim transcripts
7 of interviews but the original notes themselves.

8 I have had the unfortunate situation of prose-
9 cuting a case where a motion to suppress was brought up by
10 the defendant because there was a discrepancy between the
11 original notes and the typewritten notes.

12 THE COURT: Mr. Haggerty, there is a water
13 fountain out there if you care to get a drink, it's right
14 straight down the hall, if you will just go out this door.
15 Let's wait a minute until he gets back.

16 (Thereupon, a short recess was had.)

17 THE COURT: All right. Now, then, Mr. Silets
18 was addressing the Court on the Jenks Act problem.

19 MR. SILETS: Yes, sir. My suggestion is that
20 whatever rules are laid down by the Court after this dis-
21 cussion pertaining to documents falling within the statute
22 that those documents be understood by the government to
23 include the original notes, that is, if they were hand-
24 written, and later transcribed by a secretary or otherwise
25 into typewritten form, I think that under the statute that

1 the defendant would ultimately be entitled to all of those
2 notes and that the government should be advised when they
3 produce those notes they produce all of them, whether there
4 be six or ten or one copy.

5 MR. NEAL: Your Honor, I don't think the govern-
6 ment would have any objection to including notes where they
7 are available. My understanding of the procedure of the
8 FBI at the present time is to make notes of their interviews,
9 take those notes back to the office, use those notes to
10 prepare an interview sheet. The interview sheet is then
11 typed up. The FBI agent then compares the interview sheet
12 with his notes and sees that they are accurate and then he
13 destroys the notes.

14 Now, that has been testified to as the procedure
15 in a number of cases in which I have been involved. In that
16 case, of course, there would be no original notes, there are
17 no original notes. If there are original notes I don't
18 think the government would have any objection to either
19 submitting those to the Court or to defense counsel, depend-
20 ing upon which decision, depending on the decision whether
21 they think they are within the Act or not.

22 THE COURT: What is the position of the govern-
23 ment on the suggestion of the Court that you provide the
24 Court with these matters the night before on witnesses that
25 you contemplate using on the following day?

1 MR. NEAL: To provide the Court with that?

2 THE COURT: Yes.

3 MR. NEAL: No objection whatsoever.

4 THE COURT: What is your position with regard
5 to the suggestion of the Court on the morning of the day you
6 expect to examine any witness or witnesses that you allow
7 those to the defendant without awaiting the examination of
8 that witness?

9 MR. NEAL: Your Honor, we think this, it's to
10 all of our advantage to expedite the trial. We think that
11 we will go beyond this and submit most statements, not only
12 to the Court but to defense counsel, on the night before the
13 following day in which we call the witnesses, however, we
14 don't want to be bound by that, we want to make the decision
15 as it comes up.

16 THE COURT: That is a matter that is entirely
17 within your discretion until after the witness has testified,
18 but it would expedite the trial if those could be made
19 available before. All right.

20 MR. NEAL: In most instances we think we can.

21 THE COURT: Anything further that any defendant
22 desires to say in regard to the Jenks Act matter?

23 MR. BERKE: Nothing other than what is in the
24 brief.

25 THE COURT: All right. Next there is some

1 question raised in the briefs with regard to the Court's
2 suggestion that the Court charges be submitted. The purpose
3 of that provision was purely voluntary. No party in the
4 lawsuit is going to be precluded from submitting requests
5 to charge at any appropriate stage in the trial. It was
6 just a thought of the Court if counse had prepared charges
7 or knew now that they desired to have special charges or
8 specific charges that it would be most helpful to the Court
9 to have those at as early a date as possible.

10 So I take it there is no purpose in proceeding
11 further on that.

12 Now, taking up next the objections to the portion
13 of the order on procedure relating to the parties submitting
14 the subject matter of their voir dire, once again it was not
15 the purpose of the order to compel a party to do that, how-
16 ever, the Court did wish to put the parties on notice that
17 if they did not elect to do that that the Court reserved
18 the right to take over the voir dire examination of jurors
19 at any stage of the proceedings and to require that any
20 further voir dire of the witness or of the juror be conducted
21 by questions submitted first to the Court and be conducted
22 through the Court so that--

23 MR. NEAL: (Interposing) The government has
24 submitted a list.

25 MR. REDDY: We haven't submitted them yet but

1 we have them here, as I understand it.

2 THE COURT: Well, the purpose of the Court is
3 obvious and that is that two things, one, that the parties
4 have an opportunity to have a full voir dire in this case
5 and to examine prospective jurors fully in that respect but,
6 at the same time, the Court has the responsibility to main-
7 tain supervision, proper supervision over the voir dire
8 examination.

9 If anyone desires to be heard any further on that
10 I will be glad to hear you. I am not sure that I see where
11 it requires any further action, however, by the Court.

12 All right. Are there any other matters that any
13 party wishes to take up with regard to that procedural order
14 at this time? If not, that concludes the matters that the
15 Court had in mind taking up this morning, but I want to--

16 MR. BERKE: (Interposing) May I suggest some-
17 thing that I think should be taken up, and that is the time
18 of opening of court, the time of adjourning for lunch and
19 the time of recess and so forth.

20 THE COURT: All right, yes. I will be glad to
21 hear any of your comments in that respect. Does the govern-
22 ment have anything they want to say or anything defendant
23 wants to say about it?

24 MR. HAGGERTY: May it please the Court, if at
25 all possible, being an old war horse and an old man, I would

1 like to adjourn court at four o'clock. We are working from
2 daily copy, we have our preparation for the next day and
3 these golden years, so-called, are not golden years I find
4 and one needs a certain amount of sleep and, therefore, I
5 figure on a 15 to 16-hour day as it is from past experience,
6 but I do treasure that six or seven hours sleep and that
7 half hour would help a great deal in the afternoon.

8 THE COURT: You know, I was designated to try a
9 case up in Louisville, Kentucky, and one of the attorneys
10 in the case was a gentleman, a very eminent and elderly
11 gentleman by the name of Colonel Steitz, he was over 70 years
12 of age, I believe. We had a pre-trial hearing here in
13 Chattanooga on the case. We started at nine o'clock in the
14 morning on Saturday morning and at ten o'clock that night
15 all the rest of us were completely fagged out but Colonel
16 Steitz was still wanting to go strong and it was necessary
17 for the Court to request Colonel Steitz to delay that to a
18 later date, so maybe when we get into the trial of this
19 case we will all be fagged out long before you are, Mr.
20 Haggerty.

21 MR. NEAL: I can bear witness to that, your
22 Honor, having--

23 MR. HAGGERTY: (Interposing) Probably the
24 Colonel is going around the circuit and he is starting over
25 again, but I am not that old.

1 MR. BRANSTETTER: There is one additional point
2 that I would like to mention, may it please the Court, in
3 that specific matter, and I don't seek personal benefit
4 particularly but would it not possibly serve the best
5 interest of justice and procedure and all parties involved
6 if we held court Monday through Thursday and not hold court
7 on Friday in order that there could be not only preparation
8 but, very frankly, if this case, as has been anticipated by
9 some that it will be a tremendous burden, I am sure on myself
10 and Mr. Alexander and our ordinary office structure and setup,
11 it would be almost impossible--there is no line of communica-
12 tion where we can go back and forth between here and Nash-
13 ville by flight and get here of a morning early enough, and
14 it would give some opportunity, too, I think, to all counsel,
15 there is going to be many matters that will need coordinating
16 in the appropriate sense, of course, Mr. Neal's comment
17 notwithstanding probably, but I think this would be of value
18 and possibly save time rather than lose time.

19 I would make the suggestion that we hold court
20 Monday through Thursday if it would meet with the approval
21 of the Court and of counsel.

22 THE COURT: All right. Anything else from any-
23 body?

24 MR. SILETS: Your Honor, I would like to join
25 in that inasmuch as I have my own business in Chicago and

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1 flights out of here are not as good as they are even out of
2 Nashville. It would serve a good purpose for my own practice
3 of law to be able to get back one day a week and see how
4 things are going.

5 MR. HOOKER: If your Honor please, with all
6 deference to my friends I like to go back, too, in fact, if
7 I had my say-so I would like to be at home today, but we
8 can't do that, so, therefore, we would prefer that we proceed
9 during the entire week with the view that we could just
10 finish that much quicker.

11 Now, the four o'clock suggestion is all right
12 with us and we think maybe a little bit more time at lunch
13 might be considered. I don't know what your restaurant
14 facilities are but my observation has been that it is pretty
15 hard for a crowd this big to get out and get something to
16 eat and be back in an hour. We have to find some place with
17 service, some place where you can sit down and eat, it's a
18 pretty difficult job but we are not making any request about
19 that, we are just suggesting it.

End tk 7 20
Tk 8 fls.

21

22

23

24

25

1 THE COURT: We have operated Court ever since
2 I've been on the bench on the hours that I have suggested here
3 and have apparently operated it without any difficulty that
4 the Court is aware of. I had, except, that we had normally
5 adjourned at twelve, from twelve to one. I had moved the
6 hours from twelve-thirty because of the fact that we may have
7 more people than usual. And that we might be able to get
8 served more readily at twelve-thirty than we would at twelve.

9 MR. ALEXANDER: Your Honor, as an alternative
10 suggestion, would it be possible to--, I know Mr. Haggerty
11 doesn't want to work any later than four o'clock, but would
12 it be possible to hold court until five for four days a week
13 with the possibility of Friday, with the exception of Friday
14 for getting back. Or would it be possible in the alternative
15 to stop at, say, one o'clock on Friday? You see, every lawyer
16 in the lawsuit except I think two or three are from out of
17 town, including the government lawyers. And it would be that
18 afternoon if we could just get off that Friday afternoon to
19 get home and tend to some business, it would be of a tremendous
20 help to all of us, I believe. And I would be willing for one
21 to go much later in the afternoon. Of course, in view of
22 maybe stopping at noon or one o'clock on Friday.

23 THE COURT: All right.

24 MR. BRANSTETTER: I would suggest this, if I may,
25 and I may be in error, or flights I think between here and

1 Nashville, I rather doubt if the stopping at noon would be of
2 much help in getting in unless one attempted to drive it. And
3 I am most serious with the Court that with the flight schedule
4 if the Friday adjournment four days a week could be had, of
5 course, it is personal with me because of business and
6 otherwise, it would be of great help. If it can't be done,
7 of course, we'll fit the schedule.

8 THE COURT: All right.

9 MR. REDDY: Your Honor, I would like to mention
10 one matter at this time and see what Your Honor thinks about
11 it. And that is, whether we are to follow the usual procedure
12 with reference to reading of the indictment or making an
13 opening statement. As Your Honor knows, our practice in this
14 district is that we just read the indictment. And that is
15 what we planned to do in this matter in this case. I take
16 it there would be no change from that. I think in other
17 districts they do follow the practice of making an opening
18 statement in some districts. But we don't do that in this
19 district.

20 THE COURT: All right. Yes, our practice here
21 is to read the indictment and then have counsel state the
22 defendant's plea, re-state his plea.

23 MR. BRANSTETTER: May I understand, may it
24 please the Court, that would merely mean the procedure being
25 that the indictment is read then the defendants merely state

1 the exact plea. There is no opening question?

2 THE COURT: That's correct. There is no opening
3 statement. Each counsel for each defendant then stand and
4 re-states the plea of his client.

5 MR. SILETS: Your Honor, that raises a problem
6 as far as the Defendant Dorfman is concerned. When the
7 arraignment was had, the Defendant Dorfman stood mute and
8 the Court entered a plea of not guilty. We did that as
9 Court may be aware, under certain cases not to waive the
10 inaccuracy and the illegality of the return of the indictment.
11 To acknowledge anything in the indictment as being appropriate.
12 So, as not to over-prejudice my client before these jurors,
13 can we not have it understood that--

14 THE COURT: Well, if counsel prefer the Court
15 will state that a plea of not guilty has been entered on
16 behalf of each defendant.

17 MR. SILETS: Thank you, Your Honor.

18 MR. NEAL: Your Honor, could we think about the
19 question of opening statement versus no opening statement
20 for awhile? Or is that your decision, there will be no
21 opening statement?

22 THE COURT: Well, yes, you will have the burden
23 of proof. I follow the practice in civil cases of allowing
24 opening statements where it is by consent of the parties.
25 But in criminal cases I have followed the practice merely of

1 reading the indictment. If you wish to be heard on it I
2 will be glad to hear you. But as I say, you will have the
3 burden of proof of changing my opinion.

4 MR. NEAL: Well, of course, it has been my
5 observation that we all want to help the jury understand the
6 proof, at least the government wants to help the jury under-
7 stand the case, that they can decide, but I just don't think
8 personally that the indictment gives the jury enough of the
9 picture as to what may be coming before them. At least, I
10 would like to talk to my colleagues about this. I think that
11 an opening statement is valuable in terms of educating the
12 jury.

13 MR. HOOKER: Would Your Honor give us an opportunity
14 to discuss that briefly Monday morning?

15 THE COURT: Yes.

16 MR. BROWN: If Your Honor please, I would like at
17 this time on behalf of Defendant King to state that Mr. Neal
18 has stated very well our objection to that. We would object
19 to anything but the usual procedure of reading the indictment.

20 MR. HOOKER: If Your Honor please, may I ask
21 another question?

22 THE COURT: Yes, sir.

23 MR. HOOKER: I understand that we would be furnished
24 with a list of 200 prospective jurors at eight o'clock
25 Monday morning?

1 THE COURT: No, you will be furnished a list of
2 approximately 300.

3 MR. HOOKER: 300 or whatever the number is, then,
4 would it be Your Honor's intention to call those jurors
5 around for service in the numerical order in which they were
6 listed or to mix them up?

7 THE COURT: No, the jurors, there will be the
8 first 100 jurors drawn were instructed to report upon Monday.
9 The next 100 drawn were instructed to report upon Tuesday.
10 And the panel, current panel that was drawn originally in
11 November, was instructed to report upon Wednesday.

12 MR. HOOKER: Now, when you call them on Monday--

13 THE COURT: When they are called on Monday, their
14 cards will be shuffled and they will be not, they will not be
15 called in any order.

16 MR. HOOKER: Won't be called in the order that
17 they are on the list, they will be called, shuffled and called?

18 THE COURT: Yes.

19 MR. HOOKER: We feel that that is best. If Your
20 Honor please, we feel that the jury in this case ought to
21 be impounded. In other words, locked up.

22 THE COURT: Well, that is the matter I think we
23 can discuss Monday. Take it up and see.

24 MR. REDDY: Your Honor, the clerk was inquiring
25 about the swearing of the jurors Monday as they are called

1 around. Will they be sworn in the usual practice, you know,
2 is to call the 100 for instance, and he will swear them all
3 at one time. Or do you want them sworn as they are brought
4 into the courtroom individually?

5 THE COURT: No. All jurors will be brought in
6 the courtroom and will be qualified by the clerk. They will
7 have to be sworn before they can answer the questions required
8 by the clerk as being residents of the district and so forth.
9 And then--, they will be released from the courtroom?

10 MR. REDDY: They will be released from the
11 courtroom.

12 THE COURT: Then twelve will be called and put in
13 the jury box and the rest will be released. And those twelve
14 then will be examined by the Court generally. And then they
15 will be excused and they will be called back one at a time.

16 MR. BERKE: Giving just the list of the jurors,
17 Monday morning at eight o'clock, will we also be given the
18 qualification sheet that Your Honor said that we could have
19 during the last conference?

20 THE COURT: Those will be made available. Exactly
21 how and when, I haven't made a final determination, Harry.
22 And I wouldn't want to tell you exactly because I haven't
23 decided in my own mind exactly. But those will be made
24 available.

25 MR. BERKE: That is what Your Honor stated.

1 THE COURT: Yes. Do you understand what we are
2 talking about, Gentlemen? A questionnaire was sent out to
3 each juror that was instructed to report upon Monday and upon
4 Tuesday. And those questionnaires were instructed to be
5 returned by the juror setting out and responding to the
6 questions set forth on it. And those questionnaires, in
7 those questionnaires the Court proposes to make available to
8 you prior to your voir dire examination. And for whatever
9 assistance they might be to you in conducting your voir dire.

10 MR. GRADY: Could we inquire of Your Honor what
11 particular way the jurors will be called for examination by
12 the individual attorney? Will it be by some drawing method
13 at random?

14 THE COURT: The cards will be shuffled and the clerk
15 will draw a card and that juror will report then to the box.

16 MR. BERKE: May we step back, just a second, Your
17 Honor, we don't want to take the position--, well, let's put
18 it this way, we again want to try to help Mr. Neal in
19 carrying the burden of proof on the opening statement. We
20 disagree with Mr. Brown and any others who feel that way,
21 and we are inclined to believe that the proper way to handle
22 it is to give Mr. Neal an opportunity to make an opening
23 statement and then permit the defendants to make their opening
24 statements. And in order, if it will help any, to carry that
25 burden, as Your Honor stated, we are asking for opening

1 statements privileges.

2 MR. GRADY: Your Honor, we would like to concur
3 with Mr. Berke for Mr. Tweel.

4 MR. REDDY: Your Honor, there is one other matter
5 that I would like--

6 THE COURT: Why not do this on that matter,
7 gentlemen, let's agree that we will take that up further
8 after the jury has been selected and impaneled and prior to
9 the reading of the indictment and in that way we will not need
10 to delay matters Monday morning to take it up.

11 MR. HOOKER: That will be satisfactory to the
12 government.

13 MR. REDDY: Your Honor, there is another matter I
14 would like to take up with counsel for each party, and that
15 is with reference to the transcript and I take it there is no
16 disagreement or no objection inasmuch as there will be two
17 or three court reporters transcribing or rather taking this
18 testimony, for Mr. Smith or Mr. Hamlin I think is the name,
19 or Mr. Downing, to certify, either one of them or all of them,
20 the transcript?

21 MR. BRANSTETTER: He presented us an order this
22 morning I believe all counsel have signed.

23 MR. HAGGERTY: We signed a stipulation, Mr. Reddy.

24 THE COURT: So that all counsel have signed a
25 stipulation with regard to the court reporters, Mr. Hamlin,

1 Mr. Smith and Mr. Downing, who is the official court reporter
2 for this court to serve.

3 MR. SILETS: Your Honor, I know the technique
4 varies from district to district and I would like to inquire
5 of the Court, is it the procedure in this court for the
6 government to examine the prospective jurors until it finds in
7 this case one juror who is acceptable to the government, and
8 then tender him to the defense? And that be the procedure
9 throughout? Let the government go first and then the
10 defense?

11 THE COURT: Yes. The government will be required
12 to conduct their voir dire first and pass upon that juror and
13 then pass him to the defendants.

14 MR. SILETS: Thank you.

15 MR. HOOKER: Subject to another chance to strike
16 if after the twelve are selected?

17 THE COURT: Yes. All right. Anything further that
18 needs to be discussed here this morning?

19 MR. SCHIFFER: Yes, sir, the application of Mr.
20 Parks.

21 THE COURT: Oh, yes, we do have that. Now, then,
22 Mr. Schiffer, your matters.

23 MR. SCHIFFER: Insofar as the Defendant Parks is
24 concerned, Your Honor, we respectfully ask that the Court
25 set this case over and continue it to about Wednesday of this

1 coming week for the reason that Mr. Parks, we are preparing
2 a petition in the Supreme Court, petition of a stay, petition
3 in the nature of a stay to the Supreme Court of the United
4 States by reason of the fact that we are here in Chattanooga
5 and the means of communication are not what they have been
6 in Nashville. It is very difficult to get to Washington to,
7 very difficult to get to Washington at the hours one would
8 like to get there to file papers, prepare them and present
9 them adequately. That Mr. Parks be given the opportunity to
10 use the balance of this week and the balance of this week end,
11 and it will take him a minimum of two or three days to complete
12 on the application in the Supreme Court in Washington and
13 for that reason we ask that he be permitted that time to up
14 until Wednesday, to complete what he must do in the Supreme
15 Court of the United States.

16 THE COURT: All right.

17 MR. SCHIFFER: Substantial rights of his would be
18 Laboy case, Glasser case, and host of cases on the point. His
19 attorney myself being actively engaged under order of the
20 Court of Appeals out of Washington, D. C. We would have to
21 come down here on Monday. It would appear to me without
22 counsel. And it would be unfair not to apprise the Court at
23 this time of the conflicts between the two jurisdictions and
24 I personally feel and I certainly want the Court to know I
25 have the utmost respect for this Court, and I'm under

1 compulsion to as far as the Court of Appeals is concerned in
2 the District of Columbia.

3 THE COURT: Mr. Schiffer, why was not this matter
4 raised at the time of the hearing on December 20th?

5 MR. SCHIFFER: We had every reasonable expectation
6 and I would say ninety percent sure of settling that issue
7 over the holidays that when we returned the first week in
8 January the case would have been all completed and done with.
9 Due to certain demands made by the government, the NLRB
10 in this case, as to what should be appearing in a consent
11 order, the Respondents then felt that for all practical
12 purposes pleading guilty to alleged charges of violence
13 arising out of--, well, which would have actually been an
14 admission that they had violated a court order of the Court
15 of Appeals of Washington, D. C. for that circuit. As a
16 result, we found ourselves in an inconsistent position with
17 this case. There was no question in anybody's mind in
18 Chicago that when we returned after the Christmas holidays
19 and shortly after New Years we would be finished and very
20 happy to have terminated that case. It is onerous. It
21 didn't materialize. One chance in a million. We just couldn't
22 put it through. And I felt that Your Honor might feel that
23 it doesn't prejudice the government too much by granting him
24 the additional two days and I would be prepared and I make
25 this representation to Your Honor, to complete most of the

1 preparation of my papers today and try and be on the plane
2 by this evening or tomorrow morning into Washington and
3 immediately on Monday somehow or on Monday have those papers
4 filed and be presented on Tuesday to argue should any Justice
5 decide he wants to hear something on the matter and be back
6 here by any available transportation on Tuesday night.

7 THE COURT: All right, what does the government
8 have to say?

9 MR. NEAL: Your Honor, Mr. Schiffer had full
10 opportunity to present these matters to the Court of Appeals
11 yesterday in Cincinnati. I was there. He did present them.
12 And the points made by the Court of Appeals were as follows:

13 Number one, this proceeding is not a conflict
14 between the circuits and the court is respectfully, Your
15 Honor is respectfully requested, and referred to the remarks
16 made there yesterday. The Court pointed out that the Court
17 of Appeals for the District of Columbia referred to this,
18 referred this to a master and order^{ed} the master to conduct
19 hearings, but the Court of Appeals is not setting the hearings
20 in this case itself. They are being set by the Master.

21 MR. SCHIFFER: Yes, sir, for the Court of Appeals,
22 of course.

23 MR. NEAL: It is, Your Honor, the Court of Appeals,
24 namely is named in the order but the Master is the one
25 setting the case.

1 MR. SCHIFFER: That's right.

2 MR. NEAL: I also point out that this matter was
3 not brought to the attention of the Court on December 20th.
4 It was also pointed out that this case was set by Your Honor
5 for trial on January 20th by order dated December 24th. That
6 the hearings which conflict here were not set until January
7 8th by the Special Master. Therefore, this case was set
8 first.

9 The Court also pointed out that Mr. Schiffer has
10 never gone to the Master to ask for a postponement of that
11 case but came here. It was pointed out yesterday that while
12 it is no longer of great significance, it was pointed out
13 yesterday that persons other than the persons in this room
14 are affected by the trial date here. For example, Mr. Parker
15 was able to get the Circuit Court in Nashville to step aside.
16 I believe I'm representing that correctly. Although, of
17 course, that is not now of significance. It does show what
18 means and additional people who are involved here. We have
19 approximately ten counsel. I'm sure all of whom have made
20 arrangements to go to trial Monday. And I ask for the petition
21 for stay order, as to the Petition for Stay Order, the
22 government's position is no peculiar matter of continuance,
23 all the circumstances, all the things the court considers,
24 all the things the court considers in those matters are
25 particularly addressed to the trial court. That a stay and

1 that there is no appeal from the order granting or denying
2 a continuance. That a stay should be granted only where
3 there is reasonable likelihood that some relief can be
4 achieved. I don't see any likelihood of any appeal, and the
5 Supreme Court now is the only court left, re-considering
6 Your Honor's order denying the motion for continuance. And,
7 therefore, since there is no likelihood in our judgement of
8 the Supreme Court granting any relief, it should not grant the
9 stay. I don't think it would grant the stay and I respect-
10 fully request that we proceed to try Monday.

11 MR. SCHIFFER: Then I respectfully call Mr. Neal's
12 attention to the fact that the United States Supreme Court
13 has original jurisdiction and that in a case where Parks'
14 constitutional rights may be violated and he be forced to
15 trial without the attorney of his own choice to prepare his
16 case, that in the original application to the Supreme Court
17 of the United States for relief to set this case over is
18 within their power and jurisdiction on those grounds. It
19 very necessarily affects a vital and a guarantee, Your Honor,
20 under the constitution of the United States and it is
21 under that theory that we intend to proceed there. Do you
22 want Mr. Neal, have Mr. Parks come down here and say he has
23 no lawyer, why, you state that for the record.

24 MR. NEAL: Your Honor, of course, the Sixth
25 Circuit has ruled, it has ruled not only that the appeal was

1 improvident but that the Petition for Writ of Mandamus was
2 not well-taken.

3 MR. SCHIFFER: All they have ruled on, Your Honor,
4 is that an appeal was improvident and that mandamus was not
5 the proper remedy. I respectfully disagree with that court.
6 However, the United States Supreme Court retains to itself
7 original jurisdiction on original application that prevents
8 a violation of constitutional rights and if this isn't the
9 case then the Laboy decision, the Glasser case and everything
10 else out of the Supreme Court and the respective Courts of
11 Appeals mean nothing, if Mr. Neal is correct. Now, I should
12 like Mr. Neal to state then for the record does he want Mr.
13 Parks to appear here on Monday without an attorney?

14 THE COURT: Mr. Schiffer, in your affidavit you
15 state that hearings were to continue in that case on January
16 8, 9, 10, 16 and 17. Now, in your affidavit which you filed,
17 sworn to on January 7, 1964 you made no affidavit about any
18 case any dates after the 17th.

19 MR. SCHIFFER: May I say this, Your Honor, what
20 occurred was this, I was in Chicago proceeding with the other
21 case in Chicago at the time when I prepared these documents
22 and sent them down to Your Honor. As of that time the Master
23 had fixed those particular dates.

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1 THE COURT: Well, then the Master had not fixed
2 any dates after the 17th as of January the 7th, is that
3 correct?

4 MR. SCHIFFER: I believe that is correct except
5 that the procedure adopted by the Master is simply this, as
6 Your Honor would probably do in this case under certain
7 emergencies, we tried to fix two weeks in advance, if we
8 think the case is going to go that far, then during the
9 course of the second week if we feel it is going to continue
10 we try to take the next two weeks, we finally arrived and
11 the last fixing of dates occurred after my motion was filed
12 in your Court.

13 THE COURT: And that was sometime after this case
14 had been set for trial on the 20th, was it not?

15 MR. SCHIFFER: Yes, sir, it was and then we found
16 that we could absolutely at the outside finish this case by
17 February 14th. The Master then fixed it for those dates.

18 Now, this isn't a question of whether we are
19 first commencing a hearing after the date was fixed here by
20 this Court. This hearing had commenced November 18th, you see.
21 We were continuing one hearing on those dates from which the
22 Master would fix prospectively dates. Now, we know that in
23 any event on February 14th that case is over and it may be
24 over a week or a few days prior to February 14th.

25 Now, all I am saying here now is that there has

1 been a suggestion that the Master up there fix the date to
2 commence this trial after this court had acted. That is not
3 true. The Master, by his order of October 3rd last year,
4 fixed the first week in November.

5 I was ill for two weeks and we had to start on
6 November 18th and we actually started on that date, but we are
7 not dealing with a case which first commenced a hearing and
8 trial of the issues before or after this case had been set.
9 That case was in progress and is in progress since November
10 18th.

11 THE COURT: At the time, Mr. Schiffer, that the
12 hearings were set in that case for January 20th, or for any
13 date after January 20th, did you advise the Master that you
14 had this case set and you had this conflict?

15 MR. SCHIFFER: I don't believe I mentioned that to
16 him, Your Honor. And, as a matter of fact, I am only relying
17 upon my memory now. We were also confident that that case
18 would be terminated and finished after the holidays.

19 THE COURT: Mr. Schiffer, you say that after
20 January 7th, 1964, trial dates were set by the Master for
21 dates after January 20th, that is, after January 7th, the last
22 trial date that the Master set was January the 18th or January
23 the 17th, 1964, and you say that at the time the Master set
24 any hearings after January the 18th that you made no mention
25 of the fact that you had this case set for January the 20th.

1 MR. SCHIFFER: I am trying to see if I can't from
2 memorandum find out the time when he fixed the future dates
3 beyond January 20th from my memorandum.

4 THE COURT: At any rate, it was sometime after
5 January the 7th, the date that you made your affidavit, was
6 it not?

7 MR. SCHIFFER: I have to check that, Your Honor.

8 THE COURT: Well, is your affidavit accurate when
9 it says that trial dates were set as of the date of the
10 affidavit through the 17th of January?

11 MR. SCHIFFER: There are two affidavits, one
12 affidavit which was filed in this court. That affidavit
13 relates to what dates had been fixed by the referee as the
14 date I made out this affidavit. The affidavit I filed in
15 the Court of Appeals, of necessity, was at a later date and
16 incorporated the dates beyond January 20th that had been fixed
17 by the Special Master.

18 THE COURT: Well, -- Mr. Schiffer--

19 MR. SCHIFFER: (Interposing.) Well, here is my
20 affidavit, Your Honor, on page 2 of my affidavit filed in
21 this Court I say, at the end of the first paragraph, "January
22 8th, 9th, 10th, 16th and 17th and further dates in January
23 and February will be fixed during the course of the next
24 week to ten days." That was in my original affidavit.

25 THE COURT: At the time that those further dates

1 were set you did not advise the Master that you had any
2 conflicts?

3 MR. SCHIFFER: No, sir, we felt that case would
4 actually be terminated and finished and settled and done with.

5 THE COURT: How could you have felt that way when
6 you knew he was setting dates for it after the 18th?

7 MR. SCHIFFER: Because all I could say to Your
8 Honor is that I felt we had reasonable ground to assume that
9 what the government had suggested--, when I say "the govern-
10 ment", NLRB, that would be acceptable to all people concerned
11 with the case.

12 THE COURT: Now, your feelings in that regard I
13 understood were felt that you held those prior to the December
14 holidays.

15 MR. SCHIFFER: And right through, as a matter of
16 fact, the last conference I had with counsel for NLRB was the
17 day before I left on Thursday, as a matter of fact, so when
18 I left Chicago from the hearing to go to Cincinnati we were
19 discussing it.

20 THE COURT: Have you made any request of the
21 Master at any time to re-schedule the hearings in that matter
22 to accommodate the trial of this case?

23 MR. SCHIFFER: I could not because of my client's
24 position. They feel that they face the possibility of a jail
25 sentence, a fine and a decertification of their local union

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1 as a bargaining representative before the NLRB.

2 THE COURT: Well, do you not feel that your client
3 in this case has an exposure?

4 MR. SCHIFFER: He certainly has an exposure,
5 however, when we actually commenced trial over there on
6 November 18th, the fact that Mr. Parker would be the innocent
7 victim here, we must recognize that he would be the innocent
8 victim here, I feel that influences Mr. Parks' position is
9 that should be paramount rather than myself or the case in
10 Chicago and I find myself in the position where I, if I have
11 my own choice, my personal choice, I would rather be here on
12 this case, but I have the obligation here with the Court of
13 Appeals and it's all right to say, "Well, that is only a
14 Special Master." But the Special Master can put someone in
15 jail, just the same as the Court of Appeals itself can, and
16 for that reason I don't want to be in contempt of the court
17 in Washington and I want to do the right thing that a lawyer
18 must do and I want to do it by Your Honor.

19 All I am asking here is that a particular man's
20 interest, and have the Supreme Court act one way or the other,
21 then at least it puts me in a position as counsel to take a
22 position so I can be here and for Mr. Parks it's vital and
23 I don't see how the government's case is hurt by permitting
24 me a few days to get into Washington and perfect the applica-
25 tion and whatever the Supreme Court does about it at least

1 we have an ansswer as to Parks' constitutional position here,
2 but for two days I don't know why the government should
3 object, really.

4 I don't see any prejudice to their case.

5 THE COURT: Anything further by any party?

6 MR. BRANSTETTER: Could I inquire, may it please
7 the Court, are you going to other matters?

8 THE COURT: Well, the Court will expect this
9 trial to begin on Monday at nine o'clock as scheduled. If
10 it is necessary and appropriate that the Court make any
11 specific ruling upon the motion for a stay and if it's
12 appropriate that the Court should make any ruling, I will do
13 so by denying the motion for stay.

14 Let's see, is there any--

15 MR. SCHIFFER: (Interposing.) May I ask one
16 thing, Judge?

17 THE COURT: Yes.

18 MR. SCHIFFER: Would Your Honor be kind enough
19 to put that in a short form of order so that I could use that
20 in Chicago as to why I either have to be there or here and
21 I would take that as a form of a direction from Your Honor?

22 THE COURT: I see no reason.

23 MR. SCHIFFER: Relieve my situation a little bit.

24 THE COURT: I see no reason why that should not
25 be done.

1 MR. HOOKER: No objection.

2 THE COURT: The only question, frankly, in the
3 Court's mind in that regard, is that the parties are not
4 here, your client is not here, but you have waived his
5 presence.

6 MR. SCHIFFER: He is physically in the city of
7 Chattanooga, I waived it for this purpose.

8 THE COURT: Does the government see there is any
9 problem at all by his client not being present if the Court
10 rules on that matter?

11 MR. HOOKER: We do not.

12 THE COURT: Well, the Court will put down an order
13 to that effect in overruling your motion to stay and we will
14 type it up following this an appropriate order, if you will
15 stay for a few moments, together with any other counsel that
16 might be interested in that motion.

17 All right, are there any other motions?

18 MR. BRANSTETTER: I am sure, may it please the
19 Court, the Clerk's office may show, but was there a special
20 order entered for the drawing of the 200 additional names?

21 THE COURT: Yes, I'm sure you could get that from
22 the clerk, yes.

23 MR. NEAL: Your Honor, there is one other thing,
24 I don't know whether defense counsel would want to discuss
25 this or not, but I believe Mr. Schiffer made some reference

1 yesterday to an additional motion the defense intends to make
2 about the selection of the jury or something.

3 MR. SCHIFFER: I certainly expect to make some
4 kind of motion or rely upon what I think is gross error in
5 the case, but I want to relate to the Court of Appeals the
6 fact we weren't just dealing at arm's length when we speak of
7 constitutional rights and what the courts have already
8 determined to be adequate and full measures of protection
9 and a law for a defendant.

10 Now, I simply want in good faith for the Court up
11 here, and certainly with the Court there, to certainly state
12 my position that if I am dissatisfied with something and I
13 feel I want to go to the Court of Appeals I expect to go.

14 MR. NEAL: I meant you were referring to a motion
15 for a continuance. You were referring to--

16 MR. SCHIFFER: (Interposing) I think that one
17 grave error here is the fact that the names of the jurors
18 have been suppressed and I can't even prepare on this, even
19 for the voir dire, accurately enough to know who is going to
20 sit on this jury, whether they have been affected by all the
21 publicity which arose in this case, what their background is,
22 whether they have a fair core section of the jurors, potential
23 jurors, in the area. All these things I am being prevented
24 from knowing.

25 MR. NEAL: I just want--, it would be helpful to

1 the government to know if defense counsel were so contending
2 or not.

3 MR. SCHIFFER: I am stating my position, I hope.

4 THE COURT: All right. Anything further?

5 MR. SILETS: Yes, Your Honor. I have been served
6 by the United States attorney with several documents relating
7 to memoranda of law and several positions by the government,
8 and one of which or several of which relate to co-conspirators
9 hearsay declarations to be admissible against co-defendants.

10 Now, I direct this inquiry, if the Court permits,
11 to the government and inquire as to count four, whether any
12 such declaration is made by the Defendant Tweel outside the
13 presence of the Defendant Dorfman will be submitted in
14 evidence against the Defendant Dorfman? If so, I move again
15 for a severance and I cite to Your Honor two cases, Barton
16 versus the United States, 263 Fed. 2d 894, and Belvin versus
17 the United States.

18 THE COURT: 894 and what?

19 MR. SILETS: 263 Fed. 2d 894, and Belvin versus
20 the United States 273 Fed. 2d 583. In essence those cases
21 say that such declarations outside of the presence of the
22 co-defendant, that any prejudice resulting from that cannot
23 be obviated by a cautionary instruction and it was a reversible
24 error to permit the Court to allow those kind of declarations
25 or admissions by a co-defendant in against another defendant

1 who is not present when they were made, no matter what kind of
2 a cautionary instruction should be given by the Court.

3 On that basis, and I must assume unless I hear
4 from the government to the contrary that they so intend to
5 offer statements made by Mr. Tweel outside of Mr. Dorfman's
6 presence against Mr. Dorfman in proving their case--

7 MR. NEAL: (Interposing) Mr. Silets, aren't you
8 talking in those cases about admissions made after arrests
9 or after termination of the conspiracy. Any statement made
10 by a co-conspirator prior to arrest, regardless of joinder,
11 is admissible.

12 MR. SILETS: This is something we are going to
13 have to get into.

14 MR. BRANSTETTER: I didn't know we had a
15 conspiracy charge.

16 THE COURT: I can appreciate the necessity of
17 discussing this at this time. This memoranda, as I understand
18 would relate to possible evidence in the case and possibly
19 the admissibility of evidence to the case, a matter which we
20 will have to consider only if and when there is a tender of
21 evidence which some party feels is objectionable.

22 MR. REDDY: The memoranda was submitted in
23 accordance--

24 THE COURT: (Interposing) Were submitted in
25 accordance with the instructions of the Court so the Court

1 might do its homework as much as possible before we get into
2 the trial of the case.

3 MR. SILETS: Your Honor having inquired whether
4 there was anything further and I merely am suggesting to the
5 Court that I am renewing my motion for severance.

6 THE COURT: I see. In other words, I didn't mean
7 to cut you off at all. I thought that if the parties wanted
8 to argue their position about the admissibility or inadmissi-
9 bility of any particular type of evidence I didn't feel that
10 this was the appropriate time.

11 MR. SILETS: No, I didn't mean it to be that,
12 merely because the government has furnished this to me and
13 this is the first time I have had any idea that such
14 declarations would obviously be sought to be introduced
15 against my client. On the basis of that I want to again
16 assert and urge that my client be granted a separate trial
17 from all of the other defendants.

18 MR. REDDY: Of course, we haven't received any
19 memorandum from defendant counsel, it may not be that you
20 have any to offer at this time, but I take it you will now,
21 since you have received ours, and we will expect it in
22 accordance with the Court's order, just as we furnished it
23 in accordance with the Court's order.

24 MR. SILETS: Your Honor, I take the position that
25 the government has the burden of proof and if they offer to

1 offer evidence and there is a contest to it then I would
2 attempt at the time the evidence was sought to be introduced
3 to hand up a memorandum of law. I would hope that would be
4 the case.

5 THE COURT: All right. Anything else?

6 MR. PARKER: Your Honor inquired if there was
7 anything else. Unless Your Honor or some other party or
8 counsel deems it necessary for any purpose I, as counsel for
9 Medlin, although I find this very interesting and illuminating
10 would like Your Honor's permission to leave and I--

11 MR. BRANSTETTER: (Interposing) And not return?

12 MR. PARKER: And I commit to the bosom of this
13 Court any of Mr. Medlin's rights which might possibly be
14 affected by what transpires here after my departure. I don't
15 want to add to Your Honor's tremendous burden my presence or
16 observations if they are not needed for any further purpose.

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1 THE COURT: All right. We are happy to have
2 your company any time that you want to come down. If you
3 don't get paid for it I don't guess--

4 MR. PARKER: (Interposing) That is one of the
5 reasons I am needing to leave bad, your Honor.

6 THE COURT: All right. Now, gentlemen, any
7 party who wishes to make any motion other than the motions
8 that are now before the Court and other than Mr. Schiffer's
9 motion on behalf of his client, Parks, for a stay, will
10 please reduce that motion to writing.

11 For example, Mr. Silets, if you desire to pursue
12 your new motion for severance or otherwise that motion must
13 be reduced to writing, otherwise the Court does not expect
14 to act upon any oral motion made here this morning, other
15 than Mr. Schiffer's oral motion.

16 Suppose, if there is nothing further, we go into
17 the courtroom and look at the courtroom and discuss the
18 physical arrangement and then after we have done that any
19 party who is interested in the preparation of the order on
20 Mr. Schiffer's motion for stay, if you will return to my
21 chambers along with Mr. Schiffer and myself we will prepare
22 that order.

23 Are there any motions that have been filed this
24 morning of which the Court has not been advised yet by the
25 Clerk? Any motions filed this morning other than the motion

1 by Mr. Tweel for admission of his attorney? All right.

2 (Thereupon, the Court and counsel for the respec-
3 tive parties went into open court where the following further
4 proceedings were had, to-wit:)

5 THE COURT: Any suggestions that the Government has
6 with regard to the physical arrangement of the courtroom?

7 MR. HOOKER: The government will occupy this
8 table here?

9 THE COURT: That's correct.

10 MR. HOOKER: This will be sufficient for us.

11 THE COURT: To the left of the bench.

12 MR. HOOKER: Any arrangement made about the
13 other, whatever your Honor thinks best will be satisfactory
14 to us.

15 THE COURT: All right. Now, what suggestions
16 do the defendants have?

17 MR. HAGGERTY: We need more tables, your Honor.

18 THE COURT: All right. We will bring in another
19 table. We have another table which is somewhat larger than
20 this table and we thought about using them both and making
21 them in the form of a T, moving this table forward and putting
22 the other table across.

23 MARSHALL SERTEL: An L or T?

24 THE COURT: A T, I think would be better because
25 you will get over too close to the government. You don't

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1 want to do that.

2 MR. HAGGERTY: Contaminate us is the word, your
3 Honor.

4 MR. SILETS: Your Honor, in my district, in the
5 Northern District of Illinois, in large cases of this sort
6 we have found and assert here that the defendants feel they
7 would be prejudiced by the government being in close proximity
8 to the jury and representing by physical appearance that
9 there they were with the jury, whereas the defendants are
10 over on the side, those are the other guys, those are the
11 bad guys, and in Chicago then as a result we try to place
12 the tables at right angles to the jury box so that the
13 government and the defendants are sitting in proximity to
14 the jury and that there is no disadvantage placed by reason
15 of the physical location of the counsel tables.

16 Now, in that line of suggestion I might suggest
17 two tables this way (indicating), another table this way
18 (indicating), so that we form a U all alongside the jury,
19 in other words.

20 THE COURT: All right.

21 MR. SILETS: Does the Court see my point? One
22 table here and another table here and a third table in this
23 fashion?

24 THE COURT: All right. Any other suggestions
25 from any other defense counsel? All right. Well, we will

1 attempt to arrange it so everybody can get here.

2 MR. BERKE: It's difficult, your Honor, for
3 defense counsel sitting way back there to observe a juror,
4 particularly the way the jury--the witness box is built, and
5 I have sat at that side of the table, not very frequently,
6 and it is rather difficult to observe the demeanor of the
7 witness and if you could place them back here as Mr. Sillets
8 suggested, why, we can have a better shot at the witness.
9 I think it would really be much better, otherwise you will
10 find that counsel and I have done that, just get up and just
11 stand up here and try to observe just what they are talking
12 about and I think getting them too far back here is not the
13 thing to do.

14 THE COURT: All right. It is the practice in
15 this court for all questions to be directed from the podium,
16 to use the podium for the purpose of directing all questions,
17 unless there is some reason for approaching the witness or
18 for approaching the jury box, so that if you would follow
19 that I would appreciate it so that it won't be necessary to
20 remind counsel of it.

21 MR. REDDY: You might also mention, your Honor,
22 the practice in this district regarding the handing of any
23 exhibits to the witness.

24 THE COURT: The practice of handing exhibits is
25 for using a court officer to hand any exhibits to the witness

1 unless there is some reason why counsel should approach the
2 witness.

3 All right. If there is nothing further let all
4 parties who are interested in the preparation of the order
5 pertaining to Mr. Schiffer's client, if you will, just come
6 back to chambers and other parties we plan to see you Monday
7 morning at the time court opens.

8 (Thereupon, the pretrial conference was adjourned
9 at 12:45 P. M.)

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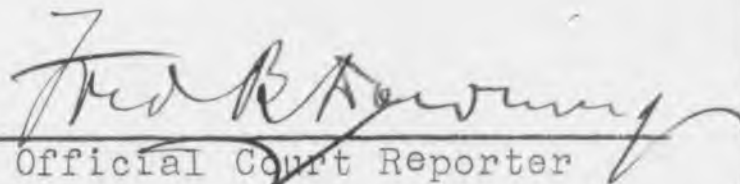
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REPORTER'S CERTIFICATE

I, Fred B. Downing, Official Court Reporter for the United States District Court, for the Eastern District of Tennessee, Southern Division, at Chattanooga, Tennessee hereby certify that Richard Smith and John E. Hamlin, court reporters, in accordance with stipulation of counsel for the parties filed in this case, recorded by machine shorthand the proceedings had in chambers and in open court in the above styled case on January 18, 1964; and that said proceedings were reduced to typewriting under my supervision; and that the foregoing transcript is a true and correct transcript of the said proceedings to the best of my knowledge.

This the 18th day of January, 1964.


Official Court Reporter